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INTERPLEADER IN THE FEDERAL COURTS

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ALTHOUGH much has been written on interpleader in the federal courts, a limited re-examination of this subject as it has developed over the years may be of interest.

THE BASIC BACKGROUND

In the words of Zechariah Chafee:

Where two persons are engaged in a dispute, and that which is to be the fruit of the dispute is in the hands of a third party who occupies the position of a stakeholder and is willing to give up the stakes according to the result of the dispute, then if that stakeholder is sued or threatened with suit, he is not obliged to be at the expense and risk of defending two actions; but, on giving up the thing in dispute, he is to be relieved, and the court directs that the persons between whom the dispute really exists shall fight it out at their own expense.¹

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¹ Chafee, *Modernizing Interpleader*, 30 YALE L.J. 814 (1921). This is one of a series of articles on interpleader by Professor Chafee, articles which have served as *fons et origo* for much of the subsequent writing on the subject. Other articles in the series by Chafee are: *Interstate Interpleader*, 33 YALE L.J. 685 (1924); *Interpleader in the United States Courts*, 41 YALE L.J. 1134, 42 YALE L.J. 41 (1932); *The Federal Interpleader Act of 1936* (Parts I & II), 45 YALE L.J. 963, 1161 (1936); *Federal Interpleader Since the Act of 1936*, 49 YALE L.J. 377 (1940); *Broadening the Second Stage of Interpleader* (Series I & II), 56 HARV. L. REV. 541, 929 (1943).

Historically, the origins of interpleader have been traced back to the fourteenth century year books, and surprisingly, to the common law and not to equity.² Thus, a report of the Court of Common Pleas dated 1313 relates a case involving the "writ of wardship" of an infant wherein the defendant, who produced the infant, stated that another claimant had also brought wardship. The court ordered both claimants of the guardianship to plead between themselves.³ As a matter of fact, this case goes perhaps further than do some so-called modern equity cases since relief was granted in the absence of privity between the parties.⁴

Subsequently, we find the extension of this concept to bailees of deeds deposited with them to secure or to await the performance of a condition. Upon the happening or non-happening of the condition, detinue might be brought against the bailee, either by one or by both bailors. In the first situation, when only one claimant was before the court, the interpleader was by way of garnishment, since the second claimant, not then in court, had to be "garnished"⁵ into court by writ of *scire facias*; in the second case, when both adverse claimants were already in court, there was compulsory interpleader.⁶

Thus "interpleader" in detinue cases—which because of procedural reasons might take one of two forms as outlined above—was an extremely just and liberal method by which a defendant might prevent a possible double liability with respect to one duty. The only requirements were that the claimants seek the same thing; that the defendant be under no independent liability by reason of his own wrongdoing; and, that the defendant stand indifferently between the adverse parties.⁷

The growth of equitable interpleader was concurrent with that of the common law, though it was not until 1484

² Rogers, *Historical Origins of Interpleader*, 51 YALE L.J. 924 (1942).

³ *Newmarket v. Boville*, Y.B. Mich. 7 Edw. II, 162, pl. 15 (1313), in 36 SELDEN SOCIETY (1918); Rogers, *supra* note 2, at 926 n.14.

⁴ Rogers, *supra* note 2, at 928. See Chafee, *Modernizing Interpleader*, 30 YALE L.J. 814, 828, 840 (1921).

⁵ From the French "garnir," to warn.

⁶ Rogers, *supra* note 2, at 933-47.

⁷ *Id.* at 947.

that we have what appears to be the first bill of interpleader in equity.⁸ Later the so-called detinue interpleader fell into disuse and interpleader in equity took the ascendancy. Finally equity prevailed and took over exclusive jurisdiction in this field and in other fields.⁹

STRICT INTERPLEADER AND BILL IN THE NATURE OF A BILL OF INTERPLEADER

Equity interpleader developed in two modes which are commonly known as "strict interpleader" and the "bill in the nature of a bill of interpleader." In strict interpleader it was essential that:

1. The same thing, debt or duty must be claimed by both or all the parties against whom relief is demanded; 2. All their adverse titles or claims must be dependent, or be derived from a common source; 3. The person asking the relief—the plaintiff—must not have nor claim any interest in the subject-matter; 4. He must have incurred no independent liability to either of the claimants; that is, he must stand perfectly indifferent between them, in the position merely of a stakeholder.¹⁰

As often occurs, limitations which were the results of historical incidents¹¹ became hardened into principles. And so, in 1921, Chafee could say: "Interpleader still suffers from its infantile repressions."¹² Indeed a mere statement of what the consequences may be if the four requirements are strictly adhered to will show how hampering they are to

⁸ *Flyke v. Banyard*, 1 Cal. Ch. cxv (1484); *Rogers*, *supra* note 2, at 950 n.110.

⁹ *Rogers*, *supra* note 2, at 950.

¹⁰ 4 POMEROY, EQUITY JURISPRUDENCE § 1322 (5th ed. 1941). "It is sometimes supposed that the remedy of interpleader is allowed to avoid the risk of two recoveries. This is entirely a mistaken view. If a party has in any way made himself liable, even for the same demand, to two claimants, he is not entitled to an interpleader. It is the essential fact that he should actually be liable to only one of the claimants. The true *rationale* of interpleader is that the party thereby avoids the risk of being vexed by two or more suits." *Id.* at § 1320. See also *Platte Valley State Bank v. National Live-Stock Bank*, 155 Ill. 250, 257, 40 N.E. 621, 623 (1895).

¹¹ Chafee, *Modernizing Interpleader*, 30 YALE L.J. 814, 822 (1921). Comment, *The Remedy of Interpleader in California*, 29 CALIF. L. REV. 35, 36 (1940).

¹² Chafee, *supra* note 11, at 823.

an otherwise expedient remedy. Thus there are cases holding that interpleader would not lie if the claims varied in amount no matter how trifling,¹³ or if the relief demanded differed in some respect.¹⁴ The requirement of privity, soundly criticized,¹⁵ has prevented a vendee from interpleading his vendor and an adverse claimant.¹⁶ "[A]n agent cannot interplead his principal and a third person where the third person asserts paramount title, nor can a tenant compel his landlord and a stranger to interplead."¹⁷ Chafee pretty well demolished this doctrine over thirty years ago, both on the basis of logic and on a convincing showing that the technical doctrine of privity got into equity by accident.¹⁸ But courts, either due to precedent or statute, continued to adhere to it in the case of strict interpleader.

The third requirement of strict interpleader, that of the plaintiff's disinterest,¹⁹ aside from a desire to avoid multiple

¹³ *Id.* at 824. *Pfister v. Wade*, 69 Cal. 133, 10 Pac. 369 (1886). See also *Hancock Oil Co. v. Independent Distrib. Co.*, 24 Cal.2d 497, 150 P.2d 463 (1944); *Burton v. Black*, 32 Ga. 53 (1861).

¹⁴ *More v. Western Grain Co.*, 31 N.D. 369, 153 N.W. 976 (1915); Chafee, *supra* note 11, at 827-28.

¹⁵ See Chafee, *supra* note 11, at 828-40.

¹⁶ *North Pac. Lumber Co. v. Lang*, 28 Ore. 246, 42 Pac. 799 (1895); *Pardee & Curtin Lumber Co. v. Odell*, 78 W. Va. 159, 88 S.E. 419 (1916).

¹⁷ Comment, 29 CALIF. L. REV. 35, 37 (1940).

¹⁸ In Chafee, *Modernizing Interpleader*, *supra* note 11, at 830, he says: "Mutual exclusiveness requires no connection between the claims except that the validity of one shall necessitate the invalidity of the other. . . . The accidental linking of privity with interpleader in some of the very few situations where this remedy lay at common law was assumed to indicate a basic principle which had to be rigidly maintained, just as a child who has jam on his bread once always insists on bread and jam."

¹⁹ 83 L. Ed. 840 (1939) compiles many of the cases on strict interpleader. Some older federal cases are: *Killian v. Ebbinghaus*, 110 U.S. 568 (1884). "The bill is either a bill of interpleader or a bill in the nature of a bill of interpleader [for a discussion of this latter bill, see *infra*]. It is clear that it cannot be sustained as a bill of interpleader. In such a bill it is necessary to aver that the complainant has no interest in the subject-matter of the suit; he must admit title in the claimants and aver that he is indifferent between them, and he cannot seek relief in the premises against either of them." *Id.* at 571; *Groves v. Sentell*, 153 U.S. 465 (1894). "The general rule is that a party who has an interest in the subject-matter of the suit cannot file a bill of interpleader, strictly so called. In fact, the assertion of perfect disinterestedness is an essential ingredient of such a bill." *Id.* at 485. See also *Sanders v. Armour Fertilizer Works*, 292 U.S. 190 (1934); *Standley v. Roberts*, 59 Fed. 36 (8th Cir. 1894), *appeal dismissed*, 41 L. Ed. 1177, 17 Sup. Ct. 999 (1896). "[A] lessee who has voluntarily taken an independent lease from each of two adverse claimants to the title of the same real estate, by establishing these facts, and bringing the amount due on one of the leases

liability or vexation, is, as pointed out by Chafee,²⁰ sound if the claimant has a real interest of as much importance in the controversy as the obligation out of which the double vexation arises. Where, however, the obligor disputes but a small part of one or both claims, he should be allowed to put the full amount in dispute in the court registry and retire. Nor should it be an objection that under interpleader there is no way to adjudicate his small interest in the suit. What Chafee calls the "second stage" of interpleader can easily be extended to a third stage, or the second stage made polygonal. But as the Supreme Court said in *Texas v. Florida* ²¹ in 1939: "The peculiarity of the strict bill of interpleader was that the plaintiff asserted no interest in the debt or fund, the amount of which he placed at the disposal of the court and asked that the rival claimants be required to settle in the equity suit the ownership of the claim among themselves." ²²

The fourth requirement of strict interpleader, namely, that plaintiff have "no independent liability to either of the claimants" is in a way a variation of the third. "[S]ince the plaintiff is independently liable to one of the claimants, interpleader would not settle the controversy and plaintiff is not a disinterested stakeholder." ²³ As was shown over thirty years ago this requirement should not be an insuperable obstacle; and the fact that there is a possible independent claim should not deny relief to an applicant who is doubly vexed by the common claim.²⁴ But this question has not been fully solved.²⁵

into court, [cannot] compel his lessors to interplead, and litigate their conflicting titles and the validity of their leases, before either of them can receive his rent, and thereby exonerate himself from liability for rent on both the leases." *Id.* at 840. See *Dee v. Kansas City Life Ins. Co.*, 86 F.2d 813 (7th Cir. 1936) (decided under the Interpleader Act of May 8, 1926, 46 Stat. 416); *United States v. Starrett Bros. & Eker Inc.*, 18 F. Supp. 671 (E.D. Pa. 1937).

²⁰ Chafee, *Modernizing Interpleader*, 30 YALE L.J. 815, 840-41 (1921); Comment, 29 CALIF. L. REV. 35, 37 (1940).

²¹ 306 U.S. 398 (1939).

²² *Id.* at 406.

²³ Comment, 29 CALIF. L. REV. 35, 38 (1940). See *Dee v. Kansas City Life Ins. Co.*, *supra* note 19.

²⁴ Chafee, *supra* note 20, at 843.

²⁵ See text accompanying notes 139-41 *infra*.

Obviously, the necessity for conformity to the four requirements of strict interpleader seriously impeded its efficient use. To soften the impact of this rigid doctrine, equity developed the bill in the nature of a bill of interpleader, when it found equitable jurisdiction to exist aside from multiple liability or vexation. In *Hayward & Clark v. McDonald*,²⁶ the bill alleged that plaintiffs were the agents of a defendant's decedent to buy certain commodities, and receive deposits of money from him for that purpose according to an account embracing more than one hundred debit items and a larger number of credit items; and that a co-defendant claimed a balance due him under transactions with the decedent relating to a fund held by plaintiffs and that actions at law had been commenced severally by the two defendants on account of such fund. The plaintiffs prayed that they be permitted to deposit the fund in court, that the law actions be enjoined, and also prayed for general relief. The defendants demurred for lack of equity. Although the bill did not contain a special prayer for an accounting the court overruled the demurrer, saying:

When it is considered that a relation of trust exists between the complainants and McDonald's estate as to the fund held by them, and as to any sum which may be found due arising from such fiduciary relation, and that an accounting will be required to ascertain the amount, and that there are rival claimants for the fund, and that separate suits have been brought against the complainants for a sum largely in excess of what they admit is due from them, it seems to us clear that the bill is not without equity.²⁷

²⁶ 192 Fed. 890 (5th Cir. 1912).

²⁷ *Id.* at 894. The court also held: "A complainant is not to be deprived of equitable relief, if entitled to it on other equitable grounds, because his case has some, but not all, of the attributes of interpleader in equity. For example, and to refer to a class of cases analogous to the one at bar, a complainant may have in his hands property or money to which others have conflicting claims, in reference to which property or conflicting claims the complainant may have equitable rights or claims and be entitled to equitable relief. In such case, while he cannot maintain a bill of interpleader strictly so called, he is nevertheless entitled to relief, and is permitted to maintain a bill in the nature of a bill of interpleader." *Id.* at 893. See also *Sherman Nat'l Bank v. Shubert Theatrical Co.*, 238 Fed. 225 (S.D.N.Y. 1916), *aff'd*, 247 Fed. 256 (2d Cir. 1917).

Equity also assumed jurisdiction of a suit involving conflicting claims on a policy of insurance for the face amount of \$10,000 where the insurance company had deposited in the registry of the court the sum of \$10,000 less \$333.50 retained for unpaid premiums. The fact of this premium retention was held not sufficient to bar a bill in the nature of interpleader.²⁸

A bill in equity alleged that X City was threatening to forfeit the franchise of a street railroad company for matters which had been in dispute between them for years, that plaintiff was the mortgagee of the railroad company's property which was affected by the city's threat of forfeiture, and prayed that the city and the railroad company be required to submit their controversy to the court for determination. The court held that this case was "a proper one for relief in the nature of interpleader."²⁹

Another situation where the bill in the nature of a bill of interpleader was found applicable is presented in *Texas v. Florida*.³⁰ Edward H. R. Green, son of the remarkable Hetty Green, had purportedly maintained his domicile in the state of Texas. But his many peregrinations had placed him, at various times and for various purposes, in New York, Massachusetts and Florida. Upon his death, each of these four states, claiming to be his domicile, asserted the concomitant right to tax his estate. If the courts of each state, as they conceivably could,³¹ maintained their several rights, the pos-

²⁸ *McNamara v. Provident Sav. Life Assur. Soc'y*, 114 Fed. 910 (5th Cir. 1902), where the court said: "In this case, neither by the bill nor by any legitimate inference to be drawn from the evidence, does it appear that the complainant had any substantive or substantial interest in the subject-matter of the suit. Where no such interest is shown, and the complainant's acts in the premises have been free and above board, and conducive to equity, a solicitor's fee may be allowed." *Id.* at 914. Cf. *Connecticut Gen. Life Ins. Co. v. Yaw*, 53 F.2d 684 (W.D.N.Y. 1931).

²⁹ *Knickerbocker Trust Co. v. City of Kalamazoo*, 182 Fed. 865 (W.D. Mich. 1910), where the court also observed: "A bill of interpleader, strictly so called, will not lie where complainant claims any interest in the subject-matter . . . but equitable relief, analogous to interpleader, will often be granted in aid of complainant's interest, when there are other interconflicting interests. . . ." *Id.* at 872. See also *John Hancock Mut. Life Ins. Co. v. Kruger*, 22 F. Supp. 326 (D. Md. 1938).

³⁰ 306 U.S. 398 (1939).

³¹ See *In re Dorrance's Estate*, 309 Pa. 151, 163 Atl. 303 (1932); *In re*

sibility existed that all four states (plus the federal government) would tax in a total amount exceeding the total estate. Accordingly, Texas brought an original suit against the other three states in the Supreme Court of the United States under article III of the Constitution.³² Although the parties did not question its jurisdiction, the Supreme Court did, *sua sponte*. After determining that the case did not fall within the narrow limits of strict interpleader, the Court held:

But as the sole ground for equitable relief is the danger of injury because of the risk of multiple suits where the liability is single, . . . and as plaintiffs who are not mere stakeholders may be exposed to that risk, equity extended its jurisdiction to such cases by the bill in the nature of interpleader. The essential of the bill in the nature of interpleader is that it calls upon the court to exercise its jurisdiction to guard against the risks of loss from the prosecution in independent suits of rival claims where the plaintiff himself claims an interest in the property or fund which is subjected to the risk. The object and ground of the jurisdiction are to guard against the consequent depletion of the fund at the expense of the plaintiff's interest in it and to protect him and the other parties to the suit from the jeopardy resulting from the prosecution of numerous demands, to only one of which the fund is subject. While in point of law or fact only one party is entitled to succeed, there is danger that recovery may be allowed in more than one suit. Equity avoids the danger by requiring the rival claimants to litigate before it the decisive issue, and will not withhold its aid where the plaintiff's interest is either not denied or he does not assert any claim adverse to that of the other parties, other than the single claim, determination of which is decisive of the rights of all. . . .

When, by appropriate procedure, a court possessing equity powers is in such circumstances asked to prevent the loss which might otherwise result from the independent prosecution of rival but mutually exclusive claims, a justiciable issue is presented for adjudi-

Dorrance's Estate, 115 N.J. Eq. 268, 170 Atl. 601, *supplemental opinion*, 116 N.J. Eq. 204, 172 Atl. 503 (Prerog. Ct. 1934), *aff'd*, 116 N.J.L. 362, 184 Atl. 743 (Ct. Err. & App. 1935), *cert. denied*, 298 U.S. 678 (1936); New Jersey v. Pennsylvania, 287 U.S. 580 (1932). See also Hill v. Martin, 296 U.S. 393 (1935).

³² See also 28 U.S.C. § 1251 (1958): "(a) The Supreme Court shall have original and exclusive jurisdiction of: (1) All controversies between two or more States"

cation which, because it is a recognized subject of the equity procedure which we have inherited from England, is a "case" or "controversy," within the meaning of the Constitutional provision; and when the case is one prosecuted between states, which are the rival claimants, and the risk of loss is shown to be real and substantial, the case is within the original jurisdiction of this Court, conferred by the Judiciary Article.³³

THE FEDERAL INTERPLEADER ACTS

Cutting across the distinction between the bill of strict interpleader and the bill in the nature of interpleader under the general equity jurisdiction of the federal courts,³⁴ is a separate and distinct type, that of statutory interpleader, which had its inception in the Federal Interpleader Act of 1917.³⁵ The necessity for such an act was pointed up in 1916 by the Supreme Court in *New York Life Ins. Co. v. Dunlevy*.³⁶ There, Effie Dunlevy, daughter of Joseph Gould, claimed to be entitled by assignment to the surrender value of an insurance policy on Gould's life issued by New York Life. In

³³ *Texas v. Florida*, 306 U.S. 398, 406-08 (1939). Parenthetically, it may be noted that in spite of Green's expressed intent and purpose to make Texas his domicile for tax purposes, the Court found his domicile to be in Massachusetts. See 39 COLUM. L. REV. 1017 (1939); 52 HARV. L. REV. 1178 (1939). See *Massachusetts v. Missouri*, 308 U.S. 1 (1939), where the Court said: "By the allegations, the property held in Missouri is amply sufficient to answer the claims of both States and recovery by either does not impair the exercise of any right the other may have. It is not shown that there is danger of the depletion of a fund or estate at the expense of the complainant's interest. It is not shown that the tax claims of the two States are mutually exclusive. On the contrary, the validity of each claim is wholly independent of that of the other and, in the light of our recent decisions, may constitutionally be pressed by each State without conflict in point of fact or law with the decision of the other. *Curry v. McCannless*, 307 U.S. 357; *Graves v. Elliott*, 307 U.S. 383. The question is thus a different one from that presented in *Texas v. Florida*, where the controlling consideration was that by the law of the several States concerned only a single tax could be laid by a single State, that of the domicile. This was sufficient basis for invoking the equity jurisdiction of the Court, where it also appeared that there was danger that through successful prosecution of the claims of the several States in independent suits enough of the estate would be absorbed to deprive some State of its lawful tax." *Id.* at 15-16.

³⁴ See text accompanying notes 10-33 *supra*.

³⁵ Act of Feb. 22, 1917, 39 Stat. 929.

³⁶ 241 U.S. 518 (1916), noted in 30 HARV. L. REV. 86 (1916). This case is also discussed in Chafee, *The Federal Interpleader Act of 1936: I*, 45 YALE L.J. 963, 964-65 (1936).

1907 a creditor of Effie recovered against her a valid personal judgment by default, after domiciliary service, in the Common Pleas Court, at Pittsburgh, Pa., where she then resided. During 1909 New York Life became liable under the policy for some \$2500 and this sum was claimed both by Gould, a citizen of Pennsylvania, and his daughter, who had removed to, and become a citizen of, California. Thereafter her judgment creditor caused issue of an execution attachment on this judgment and both the insurance company and Gould were summoned as garnishees. Effie then brought this suit in a California state court against New York Life and Gould to recover the \$2500 due on the policy. Both defendants were duly served with process in that state. After the commencement of the California suit, the insurance company answered in the Pittsburgh garnishee proceeding, admitted its indebtedness, set up the conflicting claims to the fund and prayed for instructions. At the same time at its request, a rule issued requiring Gould and his daughter to show cause why they should not interplead to determine who was entitled to the proceeds and why the company should not be permitted to pay the amount due into court. The Pennsylvania court directed that notice be given to Effie in California. This was done but she failed to appear to answer. The insurance company, pursuant to court order to appear or answer, paid the \$2500 into court and all parties except Effie having appeared, a feigned issue was framed and tried to determine the validity of the alleged transfer of the policy. On October 1, 1910, the jury found that there was no valid assignment and thereupon under court order the fund was paid over to Gould. In the meantime the California action instituted by Effie had been removed to a United States District Court. The insurance company answered in 1911 setting up *inter alia* that Effie was concluded by the aforesaid proceedings in Pennsylvania wherein the policy had been adjudged to be Gould's property. After trial to the court in May 1912, judgment was rendered in favor of Effie for the full amount claimed which judgment was affirmed by the Circuit Court of Appeals. Thus New York Life found itself doubly liable on the same

obligation—to Gould under the Pittsburgh order and to Effie on the judgment in the California federal court. On appeal from the latter judgment, the Supreme Court unanimously affirmed, holding that Effie was not bound by the Pittsburgh determination since she was not before that court, process of the Pennsylvania courts not running beyond the boundaries of the state. The same situation would have obtained in a federal court since the claimants Gould and Dunlevy were citizens of different states and the process of a federal court ordinarily does not run beyond the borders of the state containing the federal district in which the action is brought.³⁷

It was to obviate this difficulty that the Federal Interpleader Act of 1917 authorized insurance companies and benefit societies to interplead in a United States District Court when the claimants were citizens of different states, and provided that the process of those courts might run into all parts of the United States. The act was amended in 1925,³⁸ and in 1926 it was repealed and a new and improved statute enacted, extending its benefits to casualty and surety companies.³⁹ A further significant provision of these acts, which has continued down to the present, was that the amount in controversy, unlike the general jurisdictional minimum in diversity of citizenship cases, need be only \$500.

"This legislation has worked admirably." So stated Chafee in his article on Federal Interpleader published in 1936.⁴⁰ But it was not admirable enough. First, its coverage was limited to the few types of corporations therein listed; second, it did not extend to bills in the nature of interpleader, but only to bills of strict interpleader,⁴¹ so that

³⁷ See FED. R. CIV. P. 4(f): "All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held . . ." See also *Aetna Life Ins. Co. v. Du Roure*, 123 F. Supp. 736 (S.D.N.Y. 1954). "The difficulty with this position is that interpleader is not an in rem proceeding. A binding judgment cannot be rendered against anyone over whom personal jurisdiction cannot be acquired. This was established in *New York Life Ins. Co. v. Dunlevy*, 241 U.S. 518 . . ." *Id.* at 740.

³⁸ Act of Feb. 25, 1925, 43 Stat. 276.

³⁹ Act of May 8, 1926, 44 Stat. 416.

⁴⁰ Chafee, *supra* note 36, at 965.

⁴¹ Chafee points out that although the language of the earlier acts was perhaps sufficiently broad to cover bills in the nature of interpleader, two cases under the 1926 Act took the view that such bills were not within its terms.

privity, for example, was necessary; third, the prerequisites of interpleader had to be stated as averments in the bill, rather than a fact to be proved; and fourth, it did not provide for defensive interpleader in actions at law.

These omissions were supplied and other changes were made in the 1936 act.⁴² Thus, it included bills of interpleader and bills in the nature of bills of interpleader filed by any person, firm, corporation, association, or society having possession or custody of money or property of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value of \$500 or more, or providing for the delivery or payment or loan of money or property of such amount or value, or being under any obligation to the amount of \$500 or more, if (1) two or more

Id. at 971. These two cases were *Pacific Mut. Life Ins. Co. v. Lusk*, 46 F.2d 505 (W.D. La. 1930), and *Klaber v. Maryland Cas. Co.*, 69 F.2d 934 (8th Cir. 1934). In the *Pacific* case the court said: "My opinion is that, in order to vest this court with jurisdiction, the complainant must either confess its entire liability under the policy for all that has accrued [which had not been done], or it must first have that issue determined in a competent law court before it can implead the respondents under the statute." *Pacific Mut. Life Ins. Co. v. Lusk*, *supra* at 509. In the *Klaber* case the casualty company had issued its policy limited to \$10,000 for all persons injured or killed in a single accident. As a result of one accident, in which a truck had hit a bus, numerous claims, far in excess of the \$10,000 limit had been filed and the company sought and was granted a bill of interpleader under the act. The appellate court reversed, saying: "If the bill before us showed that the defendants other than Klaber were bona fide adverse claimants against the company within the meaning of the Interpleader Act, and that the company was a disinterested stakeholder, we would be inclined to hold that it might maintain this suit under the act. . . . We are convinced, however, that, under the allegations of the bill, Klaber was the only defendant who was an actual claimant, and that the other defendants are persons who may become claimants depending upon whether they succeed in procuring judgments against the assured or whether they do not.

"We are also convinced that the company is not a disinterested stakeholder. It does not aver that it is. The facts pleaded show that it is not. It admits no rights in the defendants other than Klaber to the fund, and no liability of either itself or its assured to them. It occupies a position of active hostility to all defendants except Klaber, and must, if it can, prevent their ever obtaining any claims against the fund. . . . Moreover, if it succeeds in defeating their claims against its assured, there will be about \$6000 left in the registry of the court after payment of the Klaber judgment, to which the company alone will have a claim.

"Our conclusion is that the bill is not one which comes within the Interpleader Act. . . ." *Klaber v. Maryland Cas. Co.*, *supra* at 939. The court went on to find too, that the bill could not be supported as one in the nature of interpleader.

⁴² Act of Jan. 20, 1936, 49 Stat. 1096 (now 28 U.S.C. § 2361 (1958)).

adverse claimants, citizens of different states, are claiming to be entitled to such money or property, or to any of the benefits arising by virtue of any of the enumerated obligations; and (2) the complainant has deposited such money or property or paid the amount or value of such other instrument or obligation into the registry of the court, or has furnished bond to do so. The district court within whose territorial jurisdiction one or more of such claimants reside is given power, in addition to issuing process running into all parts of the United States, to enjoin the claimants from proceeding in any state or federal court on account of the obligation of the party bringing suit. It was also provided that such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another. The act also provided that in any action at law in a United States district court against any of the persons enumerated above, such defendant may set up by way of equitable defense any matter which would entitle such person to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States district court against the plaintiff in such action at law and one or more other adverse claimants. The defendant may join as parties to such equitable defense any claimants who are not already parties to such action at law. The same provisions as to service of process and injunctive relief are applicable to the equitable defense.

In the codification and revision promulgated by the Judicial Code of 1948, the provisions of the 1936 act were distributed so that former section 41(26)⁴³ was spread over three sections: section 1335 covering general jurisdiction, section 1397 dealing with venue and section 2361 embracing process and procedure. Subsection (e) of the 1936 act relating to the equitable defense in the nature of interpleader and for the joinder of additional parties was omitted as

⁴³ *Ibid.*

being adequately covered by the Federal Rules of Civil Procedure.⁴⁴

The question was presented shortly after enactment of the 1936 act whether Congress thereby had, in a sense, preempted the field, so that interpleader under general equity principles would no longer lie. The Ninth Circuit held that: it was not the intent of the interpleader act, in its original or amended form, to abrogate the right to bring suits in interpleader in the federal courts under the general provisions of 28 U.S.C.A. § 41(1). That right had long been exercised Rather, the statute was intended to afford a remedy in situations where interpleader had theretofore been unavailable because of the impossibility of haling before a court claimants residing beyond its territorial jurisdiction. . . .⁴⁵ Accordingly, we hold that the lower court had jurisdiction to entertain the interpleader suit under the general power conferred by 28 U.S.C.A. § 41(1).⁴⁶

This holding is now reflected in Federal Rules of Civil Procedure, Rule 22, laying down the modern rule of interpleader,⁴⁷ which in subparagraph (2) provides that the "remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28, U.S.C.. Sections 1335, 1397, and 2361."⁴⁸

THE STATUTORY INTERPLEADER: DIVERSITY OF CITIZENSHIP

The question of diversity of citizenship requires special consideration since the 1936 act provides that only diverse

⁴⁴ Reviser's note to 28 U.S.C. §§ 1335, 2361 (1958). See *FED. R. CIV. P. 22*.

⁴⁵ *Cf. New York Life Ins. Co. v. Dunlevy*, 241 U.S. 518 (1916), discussed in text accompanying notes 36-37 *supra*.

⁴⁶ *Security Trust & Sav. Bank v. Walsh*, 91 F.2d 481, 483 (9th Cir. 1937); *accord, Mallers v. Equitable Life Assur. Soc'y*, 87 F.2d 233 (7th Cir. 1936), *cert. denied*, 301 U.S. 685 (1937).

⁴⁷ Rule 22 is discussed *infra*.

⁴⁸ *Rossetti v. Hill*, 162 F.2d 892 (9th Cir. 1947), noted in 172 A.L.R. 821; *Johnson v. Remy*, 220 F.2d 73 (5th Cir. 1955); *Ellington v. Metropolitan Life Ins. Co.*, 217 F.2d 609 (5th Cir. 1954); *John Hancock Mut. Life Ins. Co. v. Kraft*, 200 F.2d 952 (2d Cir. 1953); *Bank of China v. Wells Fargo Bank & Union Trust Co.*, 209 F.2d 467 (9th Cir. 1953); *Republic of China v. American Express Co.*, 195 F.2d 230 (2d Cir. 1952); *Agricultural Ins. Co. v. The Lido of Worcester*, 63 F. Supp. 799 (D. Mass. 1945); *Harris v. Travelers Ins. Co.*, 40 F. Supp. 154 (E.D. Pa. 1941); *cf. Walmac Co. v. Isaacs*, 220 F.2d 108 (1st Cir. 1955), discussed *infra*.

citizenship of the claimants is required.⁴⁹ To the extent that the act deals with strict interpleader, *i.e.*, where the plaintiff is a mere stakeholder, the Supreme Court held in *Treinies v. Sunshine Mining Co.*⁵⁰ that diversity among the claimants is sufficient since the controversy is in fact solely between them; and the fact that the stakeholder and one of the claimants are citizens of the same state is of no moment. In that case, one Amelia Pelkes died testate in the State of Washington in 1922. By her will three-quarters of her estate was to go to her second husband, John, a citizen of Washington, and one-quarter to her daughter by a previous marriage, Katherine Mason, a citizen of Idaho. Among the assets of the estate was a large block of Sunshine Mining stock, which at that time was regarded as almost worthless. Sunshine was incorporated under the laws of the State of Washington. Allegedly in accordance with the oral wishes of the decedent, Pelkes and Mason made their own distribution of one-half to each, the Sunshine stock being put, however, in Pelkes' name exclusively. Pelkes assigned the whole block to Evelyn Treinies purportedly on the ground that she had promised to support him in his old age. Treinies was a citizen of Washington.

As a result of a silver strike, the stock had by that time become valuable and Mason sued in an Idaho state court, personal jurisdiction of all the parties including Sunshine having been obtained, to impose a trust on one-half of the stock now held by Treinies and for an accounting. While this action was still pending, Mason filed a petition in the Superior Court in Washington where Amelia Pelkes' will had been probated, to remove the executor, John Pelkes, for failure to file his report of distribution and for dissipation of the Sunshine stock. Pelkes by cross-petition claimed the stock. Thereupon Mason applied to the Supreme Court of Washington for a writ of prohibition against further proceedings in the Washington court on the ground of lack of

⁴⁹ See note 42 *supra*.

⁵⁰ 308 U.S. 66 (1939). This case is discussed in Chafee, *Federal Interpleader Since the Act of 1936*, 49 YALE L.J. 377, 393 (1940).

jurisdiction in that court to determine the controversy over the stock. The writ was refused, and on May 31, 1935, judgment was entered in the Washington court upholding in full the ownership of Pelkes. This judgment came down before the Idaho case had reached the Idaho Supreme Court. That court, considering the Washington decree, held that the Washington court never had jurisdiction of the subject matter, and that, therefore, its judgment was void. All the stock was awarded to Mason.⁵¹ Certiorari to the Supreme Court of Idaho was refused by the Supreme Court of the United States.⁵² Pelkes and Treinies then filed a suit in the Washington Superior Court against Mason and Sunshine alleging that they were the owners of the stock, and that the Idaho decree was invalid for lack of jurisdiction; and asking that their title to the stock be quieted and that Sunshine be compelled to recognize their ownership. Sunshine, to protect itself against these conflicting judgments as to the ownership of the stock, then filed its bill of interpleader under the Interpleader Act of 1936⁵³ in the United States District Court of Idaho. Further proceedings in the Washington suit to quiet title were enjoined by the District Court. The interpleader suit resulted in a judgment in favor of Mason,⁵⁴ which was affirmed by the Court of Appeals.⁵⁵ The Supreme Court affirmed.

Putting aside the fascinating questions of *res judicata* and re-litigation which were also involved in the case,⁵⁶ we concern ourselves here solely with the issue of diversity of citizenship in the interpleader suit, namely: does co-citizenship between the stakeholder, Sunshine, a Washington corporation and one group of claimants, Treinies and Pelkes, citizens of Washington, bar statutory interpleader, even though the adverse claimant Mason is a citizen of Idaho? Although this question was not raised

⁵¹ *Mason v. Pelkes*, 57 Idaho 10, 59 P.2d 1087 (1936).

⁵² *Pelkes v. Mason*, 299 U.S. 615 (1937).

⁵³ Act of Jan. 20, 1936, 49 Stat. 1096 (now 28 U.S.C. § 2361 (1958)).

⁵⁴ *Sunshine Mining Co. v. Treinies*, 19 F. Supp. 587 (D. Idaho 1937).

⁵⁵ *Treinies v. Sunshine Mining Co.*, 99 F.2d 651 (9th Cir. 1938).

⁵⁶ Chafee discusses these problems in his article *supra* note 50, at 398.

by the petitioner in the United States Supreme Court, that Court considered it *ex mero motu*, saying:

Under the Interpleader Act, this identity of citizenship is permissible since diversity only between claimants is required. The Interpleader Act is based upon the clause of § 2, Article III, of the Constitution which extends the judicial [*sic*] power of the United States to controversies "between citizens of different States." Is this grant of jurisdiction broad enough to cover the present situation?

The Judicial Code, § 24,⁵⁷ provides for original jurisdiction of suits of a civil nature between citizens of different states in precisely the language of the Constitution. The present wording is practically the same as that of the Act of March 3, 1875,⁵⁸ "the circuit courts . . . shall have original cognizance . . . of all suits . . . in which there shall be a controversy between citizens of different States," and that of the original Judiciary Act of September 24, 1789,⁵⁹ "the suit is between a citizen of the State where the suit is brought and a citizen of another State." Without ruling as to possible limitations of the constitutional grant, it is held by this Court that the statutory language of the respective judiciary acts forbids suits in the federal courts unless all the parties on one side are of citizenship diverse to those on the other side.⁶⁰ For the determination of the validity of the Interpleader Act we need not decide whether the words of the Constitution, "Controversies . . . between Citizens of different States," have a different meaning from that given by judicial construction to similar words in the Judiciary Act. Even though the constitutional language limits the judicial power to controversies wholly between citizens of different states, the requirement is satisfied here.⁶¹

This is for the reason that there is a real controversy between the adverse claimants. They are brought into court by the complainant stakeholder who simultaneously deposits the money or property, due and involved in the dispute, into the registry of the court. This was done in this case. The Act provides that the "court shall hear and determine the cause and shall discharge the complainant from

⁵⁷ Now 28 U.S.C. § 1332 (1958).

⁵⁸ 18 Stat. 470.

⁵⁹ 1 Stat. 78.

⁶⁰ *Camp v. Gress*, 250 U.S. 308, 312 (1919); *Removal Cases*, 100 U.S. 457 (1879); *Case of the Sewing Machine Companies*, 85 U.S. (18 Wall.) 553 (1873); *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806).

⁶¹ Cf. *Chafee, Interpleader in the United States Courts*, 41 *YALE L.J.* 1134, 1141, 1165 (1932); *Chafee, The Federal Interpleader Act of 1936*, 45 *YALE L.J.* 963, 973 (1936).

further liability." Such deposit and discharge effectually demonstrates the applicant's disinterestedness as between the claimants and as to the property in dispute,⁶² an essential in interpleaders.⁶³ The complainant is a proper party for the determination of the controversy between the adverse claimants, citizens of different states. Their controversy could have been settled by litigation between them in the federal courts. Under similar circumstances as to parties, this Court ruled ^[64] that a removal of separable controversies to the federal court was permissible even though a proper defendant was a citizen of the same state as the plaintiff.⁶⁵

The *Treinies* case,⁶⁶ dealing with a strict interpleader situation, held, as we have seen, "without ruling on possible limitations on the constitutional grants," that where there is complete diversity of citizenship between the adverse claimants, the citizenship of the noncontesting stakeholder is immaterial.

Assuming, however, that there is not complete diversity of citizenship among the adverse claimants, may the federal court take jurisdiction in view of the rule pronounced long ago by Chief Justice Marshall in *Strawbridge v. Curtiss*⁶⁷ that the citizenship of all parties plaintiff must differ from that of all parties defendant?

The rather ambiguous language of the Interpleader Act providing that district courts shall have original jurisdiction if "two or more adverse claimants, of diverse citizenship . . . are claiming,"⁶⁸ seems to run counter to the *Curtiss* rule.

⁶² Diversity requirements for federal equity jurisdiction to avoid a multiplicity of suits from diverse claimants with claims contested by the debtor are not involved. Cf. *Di Giovanni v. Camden Ins. Ass'n*, 296 U.S. 64, 70 (1935).

⁶³ *Sanders v. Armour Fertilizer Works*, 292 U.S. 190, 200 (1934); *Killian v. Ebbinghaus*, 110 U.S. 568, 571 (1884). But *nota bene* that the requirement of disinterestedness is now no longer a requisite either under 28 U.S.C. § 1335 or under FED. R. Civ. P. 22, despite the cryptic statements in *Federal Life Ins. Co. v. Tietsort*, 131 F.2d 448 (7th Cir. 1942), *cert. denied*, 318 U.S. 768 (1943); *Metropolitan Life Ins. Co. v. Whitler*, 172 F.2d 631 (7th Cir. 1949), and *Pure Oil Co. v. Ross*, 170 F.2d 651 (7th Cir. 1948).

⁶⁴ *Barney v. Lathan*, 103 U.S. 205, 213 (1880); cf. *Pullman Co. v. Jenkins*, 305 U.S. 534, 538 (1939).

⁶⁵ *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 71-72 (1939) (footnotes supplemented and renumbered from original). See 24 MINN. L. REV. 416 (1940).

⁶⁶ See note 65, *supra*.

⁶⁷ 7 U.S. (3 Cranch) 267 (1806). See other cases cited in note 60 *supra*.

⁶⁸ 28 U.S.C. § 1335(a) (1) (1958).

In *Dugas v. American Sur. Co.*,⁶⁹ decided before *Treinies*, the surety company had filed a bill of interpleader under the Interpleader Act of 1926⁷⁰ against numerous claimants alleging that "two or more of whom are citizens of different States." The record shows that there was not complete diversity of citizenship among the various claimants, quite a number of them being citizens of the same state. The Supreme Court, however, took jurisdiction without comment, the jurisdictional question apparently not having been raised. A number of lower courts have held, citing the *Dugas* case, that it was not necessary that there be complete diversity of citizenship among all the adverse claimants, since all that the statute requires is that there be two or more adverse claimants of diverse citizenship.⁷¹ The rather recent Fifth Circuit decision of *Haynes v. Felder*⁷² presents a full view of the problems. As appears from the interpleader complaint filed under Title 28, U.S.C., Section 1335 by the First National Bank of Dallas, which for jurisdictional purposes is considered a citizen of Texas,⁷³

⁶⁹ 300 U.S. 414 (1937).

⁷⁰ 44 Stat. 416.

⁷¹ *United States v. Sentinel Fire Ins. Co.*, 178 F.2d 217 (5th Cir. 1949). "The lack of neutrality in these circumstances seems to differentiate this case in one respect from the case of *Cramer v. Phoenix Mut. Life Ins. Co.* . . . But the *Cramer* case strongly supports our view that all the adverse claimants are not required to be citizens of different states." *Id.* at 223; *Railway Express Agency v. Jones*, 106 F.2d 341 (7th Cir. 1939). "It was not necessary that there be complete diversity of citizenship among all the adverse claimants." *Id.* at 344; *Cramer v. Phoenix Mut. Life Ins. Co.*, 91 F.2d 141 (8th Cir. 1937), *cert. denied*, 302 U.S. 739 (1937); *Blackmar v. Mackay*, 65 F. Supp. 48 (S.D. N.Y. 1946). "Professor Chafee, the draftsman of the 1936 Act, approves of such interpretation for in an article written immediately after the adoption of the 1936 Act in 45 *Yale L.J.* at page 975 he stated: 'Jurisdiction exists if the statute can be construed to require only that two adverse claimants must be citizens of different states. Such an interpretation conforms to the general purpose of the 1936 Act, that the United States courts should be given power to settle all interpleader cases that cannot be handled by the state courts. This view is supported by five cases under the 1917 and 1926 Acts, which granted interpleaders where some antagonistic claimants were apparently co-citizens. The liberal attitude adopted by the courts in giving relief under former interpleader acts may be adopted as well toward the Act of 1936.'" *Id.* at 51; *Girard Trust Co. v. Vance*, 5 F.R.D. 109 (E.D.Pa. 1946) (in this case plaintiff had a partial interest). *Cf. Boice v. Boice*, 135 F.2d 919 (3d Cir. 1943); *Note, Diversity of Citizenship; The Interpleader Act*, 63 *HARV. L. REV.* 866 (1950).

⁷² 239 F.2d 868 (5th Cir. 1957).

⁷³ 28 U.S.C. § 1348 (1958).

one Davis found a cache of \$43,430 in the basement of the house of William Felder. This money was taken from Davis by the sheriff and deposited in the plaintiff bank awaiting disposition. William Felder and his three sisters entered a claim to this fund. Their claim was joint, as next of kin of their father, the builder and former occupant of the house. A Mrs. Elsie Haynes also asserted a claim for this amount claiming that Davis had taken the money from her deceased husband. The defendants named in the interpleader were Davis, a Texan, Mrs. Haynes, also a citizen of Texas, William Felder and two of his sisters, citizens of Texas, and the third sister, a citizen of Tennessee. Davis later abandoned his claim, leaving the real issue between Mrs. Haynes on the one hand, and the four Felders on the other hand. The District Court, on motion for summary judgment, sustained the Felder claim. It also entered a permanent injunction against any further proceedings in a state court.⁷⁴ Mrs. Haynes appealed, assailing the jurisdiction of the court on the ground that the requisite diversity of citizenship was lacking. The Court of Appeals propounded the question as follows: "[C]an a Texas plaintiff who is merely a stakeholder asserting no claim to the property bring interpleader against two rival sets of claimants, consisting of a citizen of Texas on the one side, opposed by four *joint* claimants of whom three are citizens of Texas, and one is a citizen of Tennessee?"⁷⁵ Since Chief Justice Marshall construed the original diversity statute⁷⁶ in *Strawbridge v. Curtiss*,⁷⁷ as requiring each party to have such citizenship that he could sue in diversity every other actual or indispensable party properly aligned against him,⁷⁸ and further, since this requirement has been held applicable to nonstatutory interpleader,⁷⁹ the court held that it was clear that such a

⁷⁴ As authorized by 28 U.S.C. § 2361 (1958).

⁷⁵ *Haynes v. Felder*, 239 F.2d 868, 870 (5th Cir. 1957).

⁷⁶ Now 28 U.S.C. § 1332 (1958).

⁷⁷ 7 U.S. (3 Cranch) 267 (1806).

⁷⁸ *City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63 (1941).

⁷⁹ *Security Trust & Sav. Bank v. Walsh*, 91 F.2d 481 (9th Cir. 1937).

proceeding could not be brought as a diversity action under section 1332 of title 28.

Thus the only basis of federal jurisdiction here which is, or might be, claimed is the Interpleader Act, 28 U.S.C. § 1335. . . .

This statute does not appear to require any diversity between the plaintiff and the defendant-claimants, and such an interpretation of the similarly conceived 1936 Interpleader Act was held to be both correct and constitutional in *Treinies v. Sunshine Mining Co.*⁸⁰ However, as the Court there held, the Act is bottomed on the diversity jurisdiction of the United States courts, permitted by Art. III, § 2, cl. 1(7) of the Constitution,⁸¹ and thus it was necessary for Congress to specify some alternative form of diversity on which jurisdiction in particular cases could be grounded. This it did in the present Act by requiring "claimants, of diverse citizenship."

The question therefore is whether the diversity here existing among the claimants is sufficient to support jurisdiction. It might first of all be noted that there is insufficient diversity among the claimants to permit a regular diversity suit between them for even after Davis, also a Texan, was dismissed as a party to the suit, the two remaining interests were represented by a Texan on one side and three Texans and a Tennessean on the other. It might further be noted that this case appears to present the absolute minimum degree of diversity that can arise, especially when one considers that the plaintiff also was a Texas citizen. It must therefore be asked first whether this minimal diversity meets the statutory requirement, and second whether the statute so interpreted would be constitutional.⁸²

In answer to the first question, the court observed that under statutory interpleader four situations might be present dependent upon the different forms or degrees of diversity among claimants in multiparty actions: (1) complete diversity, (2) diversity by alignment, (3) partial diversity, and (4) minimal diversity. After reviewing the decisions heretofore cited,⁸³ the text writers, and the stat-

⁸⁰ 308 U.S. 66 (1939). See text accompanying notes 50-65 *supra*.

⁸¹ "The judicial power shall extend . . . to Controversies . . . between citizens of different States. . . ."

⁸² *Haynes v. Felder*, *supra* note 75, at 871 (footnotes renumbered from original).

⁸³ Cases cited note 71 *supra*.

ute itself, the court held that this "complete diversity" rule had been rejected as inapplicable to statutory interpleader suits but:

[I]t still must be agreed, we think, that it is not easy to determine precisely how "incomplete" a diversity among claimants has actually been sanctioned by the cases. This problem arises from the fact that though the courts and the text writers have stated that complete diversity would not be required they have not specifically catalogued and dealt with each of the several possible forms of incomplete diversity. . . .⁸⁴ [And since] there is nothing in the language or history of the Act that suggests that Congress did not intend to cover all instances of diversity among claimants, whether "complete" or incomplete, . . . there would seem to be every reason to suppose that Congress in this area was willing to grant the federal courts jurisdiction to the actual limits of the constitutional mandate.⁸⁵

As to whether the statute so interpreted would be constitutional, the court held:

The language of the constitutional provision, "Controversies . . . between citizens of different States," would permit even the most liberal "minimum diversity" test, since, at least in part, it involves such a controversy. The courts have in fact permitted ancillary and separable suits between parties not asserting diverse citizenship, where their controversy was tied to one over which the courts did have diversity jurisdiction. . . .

No Supreme Court decision has limited the generality of these words in the Constitution. It has nowhere been held that *Strawbridge v. Curtiss*⁸⁶ set down the outer limits of jurisdiction under them, or that it did anything more than interpret the meaning of the Judiciary Act then before it; the unjustifiable extension of that case in another direction has long been criticized and rejected by the Supreme Court in *Louisville, C. & C.R. Co. v. Letson*.⁸⁷

The Supreme Court, in *Treinies v. Sunshine Mining Co.*⁸⁸ itself raised the question whether the Constitution might not have granted Congress broader power to legislate than it had exercised in the

⁸⁴ *Haynes v. Felder*, *supra* note 75, at 873 (footnotes renumbered from original).

⁸⁵ *Id.* at 875.

⁸⁶ 7 U.S. (3 Cranch) 267 (1806).

⁸⁷ 43 U.S. (2 How.) 497, 553-55 (1844).

⁸⁸ 308 U.S. 66 (1939).

Judiciary Act. We think it did so, and we think Congress now by the Interpleader Act of 1948 has exercised part, if not all, of this reserved power to give additional jurisdiction to the federal courts in this limited but very important field of interpleader.⁸⁹

What have the courts held where the stakeholder is not completely disinterested, *i.e.*, a case "in the nature of interpleader," included in section 1335 of title 28 and also in the Interpleader Act of 1936? Under this provision it seems clear, assuming that the monetary minimum prescribed therein is present, that a federal district court would have jurisdiction of a case where an interested stakeholder, a citizen of State *A*, sues two claimants, one a citizen of State *B* and the other a citizen of State *C*; in fact, the rule of complete diversity of citizenship laid down in *Strawbridge v. Curtiss*⁹⁰ is also complied with.⁹¹ Likewise, the requirements of this provision seem to be met where the interested stakeholder, a citizen of State *A*, brings suit against two claimants, one a citizen of State *A* and the other a citizen of State *B*, the monetary minimum required under the statute being present. But is the rule of the *Strawbridge* case violated, thus preventing a possible constitutional problem?⁹² This question has not yet been

⁸⁹ Haynes v. Felder, 239 F.2d 868, 875-76 (5th Cir. 1957); 45 CALIF. L. REV. 543 (1957); 42 CORNELL L.Q. 570 (1957); 55 MICH. L. REV. 1183 (1957). See also *Developments in the Law—Multiparty Litigation in the Federal Court*, 71 HARV. L. REV. 874, 913 (1958).

⁹⁰ 7 U.S. (3 Cranch) 267 (1806).

⁹¹ Standard Sur. & Cas. Co. v. Baker, 105 F.2d 578 (8th Cir. 1939) (note that the amount in controversy exceeded \$3000). See also Holcomb v. Aetna Life Ins. Co., 228 F.2d 75 (10th Cir. 1955), *cert. denied*, 350 U.S. 986 (1956) (here again the amount in controversy exceeded \$3000); General Am. Life Ins. Co. v. Floom, 96 F. Supp. 488 (W.D. Pa. 1951) (less than \$3000); John Hancock Mut. Life Ins. Co. v. Kegan, 22 F. Supp. 326 (D. Md. 1938) (here again the amount in controversy exceeded \$3000).

⁹² See Peterfreund, *Federal Jurisdiction and Practice*, 31 N.Y.U.L. REV. 752, 753 n.6 (1956): "The problem is essentially this: is the requirement of complete diversity between all the parties on one side of a controversy and all the parties on the other side, established by *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), as a legislative mandate, likewise a requirement under art. III § 2 of the Constitution? The Constitution and 28 U.S.C. § 1332 (1952) use the same words, controversy between citizens of different States. Should the constitutional language be given not only a different and broader meaning than similar words in the Judiciary Act of 1789 but also a different and broader meaning than the identical words of subsequent statutes?"

The question was before the First Circuit in *Walmac Co. v. Isaacs*, 220 F.2d 108 (1st Cir. 1955), where it was considered but not resolved, the court

resolved by the Supreme Court.⁹³

THE FEDERAL INTERPLEADER ACTS—ANCILLARY JURISDICTION

Where interpleader is ancillary to an action properly founded on diversity of citizenship, it has been held that it may be brought in a federal court even though co-citizenship of some of the parties would have otherwise defeated federal jurisdiction.⁹⁴ And, if the interpleader is by way of counterclaim arising out of the same subject matter as plaintiff's claim, *i.e.*, a compulsory counterclaim,⁹⁵ it requires no independent basis of federal jurisdiction.⁹⁶

The *A/S Krediid Pank v. Chase Manhattan Bank* case⁹⁷ was based on diversity of citizenship jurisdiction, since the original action was between an alien plaintiff and a citizen of New York. By interpleading the aliens A, B, John Doe and Richard Roe and the State Bank of the U.S.S.R., the remaining controversy would be wholly between aliens: *ergo*, argued the plaintiff, the court is deprived of jurisdic-

not finding it necessary to provide the answer to the constitutional question. "The reason for this is that we find another basis for federal jurisdiction." *Id.* at 113. See Note, *Diversity of Citizenship: The Interpleader Act*, 63 HARV. L. REV. 866 (1950), and the 1948 revision of 28 U.S.C. § 1335(a)(1): "Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title. . . ."

⁹³ See persuasive argument that the Constitution granted Congress broader power to legislate respecting diversity jurisdiction than it had exercised in the Judiciary Act. *Haynes v. Felder*, *supra* note 89.

⁹⁴ *Walmac Co. v. Isaacs*, *supra* note 92; *Sherman Nat'l Bank v. Shubert Theatrical Co.*, 238 Fed. 225, 228 (S.D.N.Y. 1916), *aff'd*, 247 Fed. 256 (2d Cir. 1917). See also *Republic of China v. American Express Co.*, 195 F.2d 230, 234 (2d Cir. 1952); *Marine Midland Trust Co. v. Irving Trust Co.*, 56 F.2d 385 (S.D.N.Y.), *appeal dismissed sub nom.* *Marine Midland Trust Co. v. Eybro Corp.*, 58 F.2d 165 (2d Cir. 1932); *Harris v. Travelers Ins. Co.*, 40 F. Supp. 154, 156 (E.D. Pa. 1941); *Ciechanowicz v. Bowery Sav. Bank*, 19 F.R.D. 367 (S.D.N.Y. 1956).

⁹⁵ FED. R. CIV. P. 13(a).

⁹⁶ *Moore v. New York Cotton Exch.*, 270 U.S. 593, 609-11 (1926); *United Artists Corp. v. Masterpiece Prods. Inc.*, 221 F.2d 213 (2d Cir. 1955). "We conclude that, in the case of a counterclaim which is compulsory, ancillary jurisdiction should extend to additional parties, regardless of an ensuing lack of diversity." *Id.* at 216; *Aberdeen Hosiery Mills Co. v. Kaufman*, 113 F. Supp. 833, 834 (S.D.N.Y. 1953); *United States v. American Sur. Co.*, 25 F. Supp. 700, 702 (E.D.N.Y. 1938), *aff'd*, 142 F.2d 726, 728 (2d Cir. 1944); *Ciechanowicz v. Bowery Sav. Bank*, *supra* note 94.

⁹⁷ 155 F. Supp. 30 (S.D.N.Y. 1957).

tion.⁹⁸ The court, however, relying on the doctrine of ancillary jurisdiction concluded: "The original diversity jurisdiction of the court over the action under 28 U.S.C. § 1332 [the basic diversity of citizenship statute] is not destroyed by the order allowing interpleader and the initial jurisdiction of the original suit is sufficient" ⁹⁹

THE FEDERAL INTERPLEADER ACTS: DIVERSITY OF CITIZENSHIP UNDER THE 1948 CODIFICATION

Until the codification of title 28 in 1948, the only diversity jurisdiction provided for in the Interpleader Acts was that of diversity of citizenship between citizens of the states of the United States. Now, section 1335 encompasses the citizenship prescribed in section 1332—the basic diversity of citizenship statute—in view of the clause now contained in section 1335(a)(1): "two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title. . . ." Thus, within the Interpleader Act there are now to be included under the term "adverse claimants of diverse citizenship," citizens of the states, of the District of Columbia, of the territories and of the Commonwealth of Puerto Rico.¹⁰⁰ It would also seem that citizens of foreign states may be included, conditioned on the long recognized rule that aliens of diverse citizenship may not be adverse parties to actions bottomed on diversity of citizenship.¹⁰¹

⁹⁸ *Id.* at 36.

⁹⁹ *Ibid.* The court cited *John Hancock Mut. Life Ins. Co. v. Kraft*, 200 F.2d 952 (2d Cir. 1953); *Republic of China v. American Express Co.*, 195 F.2d 230 (2d Cir. 1952); *Kerrigan's Estate v. Joseph E. Seagram & Sons, Inc.*, 199 F.2d 694 (3d Cir. 1952).

¹⁰⁰ 28 U.S.C. § 1332 (1958).

¹⁰¹ *Jackson v. Twentyman*, 27 U.S. (2 Pet.) 136 (1829); *Hodgson & Thompson v. Bowerbank*, 9 U.S. (5 Cranch) 303 (1809); *Kavourgias v. Nicholaou Co.*, 148 F.2d 96 (9th Cir. 1945). See also *Ex parte Edelstein*, 30 F.2d 636, 638 (2d Cir. 1929). The rule is otherwise where jurisdiction is founded on a substantial federal question. *Doidge v. Cunard S.S. Co.*, 19 F.2d 500 (1st Cir. 1927). But see *A/S Kreditt Pank v. Chase Manhattan Bank*, 155 F. Supp. 30 (S.D.N.Y. 1957) (defensive interpleader under Fed. R. Civ. P. 20).

THE FEDERAL INTERPLEADER ACTS: INDEPENDENT LIABILITY

Another question that still seems to be in flux arises where the stakeholder, although not a so-called interested party in the interpleader, is claimed to be liable to one or more of the interpleaded parties on an independent liability.¹⁰² In addition to including the bill in the nature of interpleader, section 1335 of title 28 provides that an interpleader action "may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are identical, but are adverse to and independent of one another."¹⁰³ Under the Interpleader Act of 1926, which did not bring within its scope the bill in the nature of interpleader and hence contained no provision similar to the one just quoted,¹⁰⁴ it was held that if such an asserted independent liability existed, interpleader would be denied.¹⁰⁵ But in order to determine this fact, the court would first try this issue, and, if no such liability was found, interpleader would be allowed.¹⁰⁶ This holding was followed, after the enactment of the Interpleader Act of 1936, without noting the difference in language between the two acts.¹⁰⁷

This brings us to the case of *Hurlbut v. Shell Oil Co.*,¹⁰⁸ where the situation was the following: Hurlbut had sued Shell Oil to collect one-eighth royalties under an oil lease on Hurlbut's land. Shell admitted liability for the royalties, but asserted that various other parties were claiming the same fund, and therefore interpleaded Hurlbut with such other parties. Hurlbut and the third parties

¹⁰² See text accompanying notes 10, 23-25 *supra*.

¹⁰³ 28 U.S.C. § 1335(b) (1958). See Chafee, *Federal Interpleader Since the Act of 1936*, 49 YALE L.J. 377, 412 (1940); Note, 26 GEO. L.J. 1017, 1021-22 (1938).

¹⁰⁴ 44 Stat. 416.

¹⁰⁵ *Dee v. Kansas City Life Ins. Co.*, 86 F.2d 813 (7th Cir. 1936).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Equitable Life Ins. Co. v. Gilman*, 14 F.R.D. 243 (W.D. Mo. 1953); *First State Bank v. Citizens State Bank*, 10 F.R.D. 424 (D. Neb. 1950).

¹⁰⁸ 131 F. Supp. 466 (W.D. La. 1955). This case serves as the "lead-off" for an able law review Note: *The Independent Liability Rule as a Bar to Interpleader in the Federal Courts*, 65 YALE L.J. 715 (1956).

moved to vacate the order of interpleader on the ground that Shell was "independently liable" to them aside from the validity of their royalty claims.¹⁰⁹ The court granted the motion and dismissed the counterclaim for interpleader, although it expressly recognized that under the Interpleader Act of 1936, the old rule of independent liability is not mentioned, and that "leading textbook authorities seem to support" the contention "that the old rule has been abandoned." Relying on the three earlier cases just considered,¹¹⁰ the court stated that "this court adheres to the principle that the nonexistence of independent liability in favor of the interpleaded party and against the party seeking interpleader is still an essential element of this equitable remedy."¹¹¹ Its conclusion seems erroneous in the light of the provisions of section 1335 quoted above,¹¹² the history of the Interpleader Act of 1936,¹¹³ and the provisions of Rule 22(2) of the Federal Rules of Civil Procedure.

The *Hurlbut* decision goes even beyond the independent liability rule as followed in the *Dee* case, which stated that if interpleader were opposed on the ground of independent liability, the court would take evidence, determine that issue, and dismiss only if such liability were shown.¹¹⁴ "I hold," said the court in *Hurlbut*, that:

[T]he question as to whether or not there is independent liability does not necessitate a trial by me of that question, but only a determination by me that as a matter of law there is or there is not a genuine issue as to law or fact. Flimsy or transparent contentions

¹⁰⁹ The opinion does not set forth the basis for the independent liability, but, according to the Yale Note adverted to in note 108 *supra*: "The allegations of independent liability . . . were based on the theories that (1) Shell had negligently classified the oil wells on claimants' lands; (2) Shell had incorrectly classified the wells and in so doing had prejudiced the third party claimants; and (3) Shell had violated certain development clauses in the third parties' lease. Supplemental Memorandum for Defendants, p. 9, *Hurlbut v. Shell Oil Co.* . . ." *Id.* at 716 n. 12.

¹¹⁰ *Dee v. Kansas City Life Ins. Co.*, *supra* note 105; *Equitable Life Ins. Co. v. Gilman and First State Bank v. Citizens State Bank*, *supra* note 107.

¹¹¹ *Hurlbut v. Shell Oil Co.*, 131 F. Supp. 466, 468 (W.D. La. 1955).

¹¹² See text accompanying note 103 *supra*.

¹¹³ Note, *The Independent Liability Rule as a Bar to Interpleader in the Federal Courts*, 65 YALE L.J. 715, 719 (1956).

¹¹⁴ See *Dee v. Kansas City Life Ins. Co.*, 86 F.2d 813 (7th Cir. 1936).

of independent liability do not create genuine issues. The independent liability of Shell hinges in part on questions of Louisiana law not yet settled by our state courts, and we certainly cannot say as a matter of law that there is no independent liability. Because I believe that the question of independent liability involves a complicated question of law, and the decision thereon depends upon an inquiry into the surrounding facts and circumstances, it is my opinion that the interpleader should be dismissed and the parties freed to assert their respective claims in courts of their own choice. This court is not holding that independent liability exists. It is merely holding that there is a substantial question of fact and law to be determined on the issue. . . . I do not believe any legal prejudice will result to any one as a result of the court's action here. The prospect of further litigation over these leases on independent matters in other courts is not legal prejudice. That litigation, if it were to be entertained here, would unduly delay the hearing of plaintiffs' original suit until the conclusion of litigation on the question of independent liability, which litigation gives every promise of being protracted.¹¹⁵

The Note above cited,¹¹⁶ criticizing the *Hurlbut* decision, argued that it was based on the *Dee* case,¹¹⁷ which, it asserted, had in effect been overruled by the act of 1936.¹¹⁸ Actually, the Note concedes that literally the act did not do so, but it "explicitly eliminated the ancient interpleader requirement of privity between the claimants, believing that this step necessarily eliminated the independent liability rule."¹¹⁹ Be

¹¹⁵ *Hurlbut v. Shell Oil Co.*, *supra* note 111, at 469. This conclusion seems somewhat confused. First, if the real problem is that the "independent liability of Shell hinges in part on the questions of Louisiana law not yet settled by our State courts," why does the district court fail to follow the mandate of *Meredith v. Winter Haven*, 320 U.S. 228 (1943) that in all diversity cases involving the jurisdictional amount, the federal court must decide questions of state law although the highest court of the state has not answered them? The answers are difficult and the character of the answers which the highest state courts may ultimately give remain uncertain. Second, regardless of the *Meredith* case, if the question of independent liability involves problems of law or fact, why does the district court refrain from determining those questions in view of the rather clear directions of § 1335? See Note, *The Independent Liability Rule as a Bar to Interpleader in the Federal Courts*, *supra* note 113, at 717, and the sound holding of *Jersey Ins. Co. of New York v. Altieri*, 5 N.J. Super. 577, 68 A.2d 852 (Ch. Div. 1949).

¹¹⁶ *Supra* note 113.

¹¹⁷ *Dee v. Kansas City Life Ins. Co.*, *supra* note 114.

¹¹⁸ Act of January 20, 1936, ch. 13(1), 49 Stat. 1096.

¹¹⁹ *Supra* note 113, at 719.

that as it may, rule 22 (Interpleader) seems to have accomplished this result:

(1) It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. . . . The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28, U.S.C., §§ 1335, 1397, and 2361. Actions under those provisions shall be conducted in accordance with these rules.¹²⁰

It is to be noted that rule 22, although adopting the language of the act of 1936, added a clause, namely, that it is not ground for objection to the joinder "that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants." This apparent difference in wording between the act of 1936¹²¹ and federal rule 22 was stressed by the court in *Girard Trust Co. v. Vance*,¹²² where certain of the interpleaded defendants claimed that the plaintiffs were under an independent liability to them. Having carefully analyzed the facts at the so-called first stage,¹²³ the court held that the plaintiffs were not under any independent liability to these defendants and then continued:

¹²⁰ "In fact, this [rule 22] is interpleader with the shackles of the requirements such as privity, no interest in the stake, and so on, taken away, and made freely available either as a claim or a counterclaim or otherwise. There is really no necessity for having a separate rule on interpleader here, in view of the broad provisions of Rule 20 on general joinder, for that includes all that is authorized by the interpleader rule." PROCEEDINGS OF THE WASHINGTON D.C. INSTITUTE ON FEDERAL RULES OF CIVIL PROCEDURE 66 (1938). See also Wright, *Joinder of Claims and Parties under Modern Pleading Rules*, 36 MINN. L. REV. 580, 621-22 (1952).

¹²¹ Now 28 U.S.C. § 1335 (1958).

¹²² 5 F.R.D. 109 (E.D. Pa. 1946).

¹²³ The court first held that an action in interpleader is conducted in two stages. In the first, the court must determine whether plaintiff is entitled to interplead the defendants and may take evidence for that purpose. The second is between the respective defendants on their adverse claims. *Girard Trust Co. v. Vance*, 5 F.R.D. 109, 114 (E.D. Pa. 1946).

If this action were governed by the provisions of Rule 22(2), much of the foregoing would have been unnecessary, because the Rule provides that it is not ground for objection "that the plaintiff avers that he is not liable in the whole or in part to any or all of the claimants." Rule 22(1). In this, the basis for relief under the Rule is broader than that under the Interpleader Act of 1936 . . . for the provision above quoted does not appear in the statute. However, this Court can not entertain this action as one under the Rules, because the jurisdictional basis of complete diversity between the plaintiffs and the defendants is not present. . . . An action under Rule 22 is like any other civil action based on the diversity jurisdiction of the federal courts, and the ordinary rules of jurisdiction govern. . . . Of course, the broad provisions of the Rule cannot be engrafted upon the Interpleader Act because, to do so, would be to extend the jurisdiction of the federal courts, a result which the Rules expressly exclude. See Rule 82.¹²⁴

If the court's conclusion that the provisions of rule 22(1) and (2) are not applicable to actions under statutory interpleader is correct, an unfortunate disparity of meaning in two statutes attempting to regulate the selfsame subject results. It would seem, however, that the court's construction was too limited in its scope.¹²⁵ *Holcomb v. Aetna Life Ins. Co.*,¹²⁶ as stated in the opinion,¹²⁷ and also in counsels' briefs,¹²⁸ was an action in the nature of interpleader under section 1335 of title 28. Some of the defendants, citing the *Girard Trust Co.* decision¹²⁹ as authority, contended that statutory interpleader would not be extended by rule 22. The plaintiff, relying on the express words of the rule, claimed that it alone disposed of defendants' contention,¹³⁰ and also stated that the law was clear that an action in the nature of interpleader would lie even though the plaintiff in

¹²⁴ *Id.* at 113-14.

¹²⁵ See *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 444-45 (1946).

¹²⁶ 228 F.2d 75 (10th Cir. 1955), *cert. denied*, 350 U.S. 986 (1956).

¹²⁷ *Id.* at 79-80.

¹²⁸ Brief for Appellant, p. 38, Brief for Appellee, pp. 22-23, *Holcomb v. Aetna Life Ins. Co.*, *supra* note 126. It appears, however, that the district court also had jurisdiction of the action as one of equitable interpleader on the basis of diversity of citizenship under 28 U.S.C. § 1332 (1952).

¹²⁹ Brief for Appellant, p. 38.

¹³⁰ Brief for Appellee, pp. 22-23.

the interpleader action was seeking to defeat liability to one or all of the interpleaded claimants.¹³¹ The Court of Appeals for the Tenth Circuit adopted the plaintiff's construction without advertng to the *Girard* decision.¹³²

However, as seems obvious, this question of independent liability to one of the claimants continues to crop up. In *American-Hawaiian S.S. Co. v. Bowring & Co.*,¹³³ a case decided in 1957 under section 1335, plaintiff had sold two vessels to the same purchaser. Two groups or pairs of brokers claimed the commissions due. One group, however, opposed the interpleader on the "independent liability" ground that a commission was due them in any event, irrespective of whether they had procured the sale, and even though the plaintiff might also be liable to the other group of brokers. The court held a trial necessary as part of the first stage of the interpleader proceeding.

If upon such a trial the portion of the counterclaim alleging the independent liability is found to have no merit then the complaint in interpleader will be sustained, the plaintiff may be discharged on just terms, each of the defendant pairs will be required to state its own claims and answer the claims of the other so as to join issue, and in due course proofs will be taken on the prospective claims as between the defendants. . . .

However, should the independent liability of the plaintiff to the Ocean Freighting-General Steamship pair be established upon the preliminary trial, the interpleader complaint would, of course, be dismissed and the Ocean Freighting-General Steamship pair would proceed to judgment on its counterclaim in accordance with its proofs. The Bowring-Smith & Johnson pair would then be free to pursue such remedies against plaintiff on its claim for commissions as it might be advised.

Thus the office of interpleader—which is not so much to protect against double liability as against double vexation in respect to a single liability, . . . will be fully served.¹³⁴

¹³¹ Brief for Appellee, p. 27, citing *inter alia*: *Texas v. Florida*, 306 U.S. 398 (1939); *Standard Sur. & Cas. Co. v. Baker*, 105 F.2d 578 (8th Cir. 1939); *Equitable Life Assur. Soc'y v. Maloney*, 85 F. Supp. 212 (E.D. Mo. 1948).

¹³² *Holcomb v. Aetna Life Ins. Co.*, *supra* note 127.

¹³³ 150 F. Supp. 449 (S.D.N.Y. 1957).

¹³⁴ *Id.* at 455.

In *Poland v. Atlantis Credit Corp.*,¹³⁵ the same judge applied the same reasoning, although the number of parties and problems was much greater. The following are the salient facts in the case: the S.S. St. Nicholas, having been stranded and reduced to a constructive total loss, Supreme, the owner, and Atlantis, the mortgagee, separately sued the insurers on the policies involved in the New York Supreme Court for New York County. The state court actions were settled separately. The Atlantis settlement was in writing for eighty per cent of the claim, roughly \$570,000, and provided for payment of such sum to Atlantis on a date certain, in default whereof entry of judgment would follow. The Supreme settlement was accomplished by oral agreement of counsel. However, a few days later the attorneys for Supreme sent a letter to the attorneys for the insurers confirming that the suit was settled for \$74,000 "on the same terms and conditions as the settlement" in the case of Atlantis.

A dispute having arisen as to who was entitled to the \$74,000, the insurers brought the present action in the United States District Court for the Southern District of New York under the Federal Interpleader Act and rule 22,¹³⁶ against defendants Supreme, Atlantis and about twenty creditors of Supreme (against whom a petition in bankruptcy had been filed). They alleged that the various defendants claimed to be entitled to all or part of the \$74,000 deposited in the court registry. Defendant Atlantis moved to dismiss the interpleader action on the ground that interpleader did not lie because the plaintiff insurers were under an independent liability to it on two grounds. First, that under the letter of Supreme's attorney to the attorneys for the insurers, confirming the Supreme settlement "on the same terms and conditions" as the settlement of the Atlantis action, Atlantis was entitled to be paid the amount due under the settlement. Second, Atlantis claimed an oral agreement made with plaintiffs at the time of the Supreme settlement to pay the amount

¹³⁵ 179 F. Supp. 863 (S.D.N.Y. 1960).

¹³⁶ *Id.* at 866.

due under the settlement to it. The affidavits submitted on the motion raised issues of fact which the court held could not be determined on the papers submitted and placed the matter of independent liability on the calendar for a preliminary trial, thus following its decision in the *American-Hawaiian S.S. Co.* case.¹³⁷ The court held:

If, upon the preliminary trial [*i.e.*, the first stage], the claim of independent liability made by Atlantis is found to be without merit, then the complaint in interpleader will be sustained and the plaintiffs may be discharged from further liability on just terms. However, should Atlantis establish its claim of independent liability the complaint in interpleader would be dismissed, at least as to it, Atlantis would be entitled to maintain an action against plaintiffs based on the independent liability, and plaintiffs would be left to such action as might be appropriate with respect to their interpleader claims against the remaining defendants.

Montgomery Ward & Co. v. Fidelity & Deposit Co. of Maryland, 7 Cir., 162 F.2d 264, which plaintiff urges leads to a different conclusion, is clearly distinguishable from the case at bar. Here, in contrast to *Montgomery Ward*, the interpleading plaintiffs, prior to the settlement of the Supreme action in the state court on which the claim of independent liability is founded, admittedly knew of the existence of the claims of various creditors of Supreme who are named as defendants in the interpleader action. Yet, if Atlantis is to be believed, despite such knowledge plaintiff insurers expressly promised to pay the amount due by way of settlement to Atlantis, the mortgagee of the vessel, and thus created an absolute and independent liability to Atlantis quite apart from any liability which they might have to the other defendants. It may well be that at the preliminary trial it will be found that no such promise was made by the plaintiffs, and that all their liabilities arising out of these transactions were discharged by the payment of the amount due under the Supreme settlement into the Registry of this court. But this is dependent upon the result of the preliminary trial after proof as to the facts and circumstances surrounding the Supreme settlement and the dealings between the plaintiffs and Atlantis with respect thereto.

Accordingly the case will be placed on the trial calendar for a preliminary trial of the issue of independent liability running from

¹³⁷ *American-Hawaiian S.S. Co. v. Bowring & Co.*, 150 F. Supp. 449 (S.D. N.Y. 1957).

plaintiffs to Atlantis. The temporary restraining order will continue in force and effect until this issue is decided and such further order as may be appropriate can then be made.¹³⁸

The court's approach in both cases, it is submitted, runs counter not merely to the intended liberality of both the Federal Interpleader Act and Federal Rules of Civil Procedure, Rule 22, but also to the liberality of Federal Rules of Civil Procedure, Rule 20, permitting general joinder in one action and providing for separate trials and the making of other orders to prevent delay or prejudice. Here, the suggestion that the "determination of an independent liability should be made [not at the first stage of interpleader but] during the second stage of interpleader when the claimants are contesting their theories of title"¹³⁹ seems appropriate. "In an expanded second stage independent claimants would present alternate grounds for recovery—title and independent liability."¹⁴⁰ Perhaps the best solution is to clarify both section 1335 and rule 22 as has been done recently in the State of New York, where the New York Civil Practice Act now provides: "Where the issue of an independent liability of the stakeholder to a claimant is raised by the pleadings or upon motion, the court may dismiss the cause of action against the appropriate claimant, order a severance of the action or separate trials, or require the litigation of the issue in the action."¹⁴¹

THE CIVIL INTERPLEADER RULE 22

Federal Rules of Civil Procedure, Rule 22, provides:

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability.

¹³⁸ *Poland v. Atlantis Credit Corp.*, 179 F. Supp. 863, 867-68 (S.D.N.Y. 1960).

¹³⁹ Note, *The Independent Liability Rule as a Bar to Interpleader in the Federal Courts*, 65 YALE L.J. 715, 720-21 (1956).

¹⁴⁰ *Id.* at 721. But see *Developments in the Law—Multiparty Litigation in the Federal Court*, 71 HARV. L. REV. 874, 890 (1958).

¹⁴¹ N.Y. CIV. PRAC. ACT § 285(6). See 1954 N.Y. JUDICIAL COUNCIL ANN. REP. 276-77; *Heene v. Sewell*, 19 Misc.2d 118, 189 N.Y.S.2d 924 (Sup. Ct. 1959). See also PA. R. CIV. PROC. 2301-25 (interpleader by defendants).

It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28 U.S.C., §§ 1335, 1397, and 2361. Actions under those provisions shall be conducted in accordance with these rules.

Under paragraph (1) of this rule there is embraced the general equity interpleader, the historical basis and general principles of which have been discussed above.¹⁴² Also, "the first paragraph provides for interpleader relief along the newer and more liberal lines of joinder in the alternative. It avoids the confusion and restrictions that developed around actions of strict interpleader and actions in the nature of interpleader. Compare *John Hancock Mutual Life Insurance Co. v. Kegan et al.*, D.C. Md. 1938, 22 F. Supp. 326. It does not change the rules on service of process, jurisdiction, and venue, as established by judicial decisions."¹⁴³ Paragraph (2) expressly preserves statutory interpleader which has also been previously considered,¹⁴⁴ and provides that the procedure under statutory interpleader must be in accordance with the Federal Rules of Civil Procedure. "The second paragraph allows an action to be brought under the recent interpleader statute when applicable. By this paragraph all remedies under the statute are continued, but the manner of obtaining them is in accordance with these rules."¹⁴⁵

¹⁴² See text accompanying notes 10-18 *supra*.

¹⁴³ FED. R. CIV. P. 22, notes of Advisory Committee, p. 239.

¹⁴⁴ See text accompanying notes 120-24 *supra*.

¹⁴⁵ *Supra* note 143.

INTERPLEADER UNDER RULE 22(1) AND UNDER STATUTORY
INTERPLEADER COMPARED

A comparison and contrast of statutory and so-called equity interpleader as amplified by rule 22(1) may be helpful:

(1) *Diversity of Citizenship and Jurisdictional Amount:*

Under Title 28 U.S.C., Section 1335 (statutory interpleader), as previously shown,¹⁴⁶ the required diversity of citizenship as defined in and presently construed under that section is that at least some of the claimants are citizens of different states, the citizenship of the plaintiff stakeholder, to the extent that he is disinterested, being disregarded.¹⁴⁷ Under those circumstances the jurisdictional minimum is \$500. If, however, diversity of citizenship between claimants is lacking, statutory interpleader will not lie and we must look to rule 22(1). Under this rule there must be complete diversity of citizenship between the plaintiff stakeholder on the one side and the claimants on the other side under the judicial construction of *Strawbridge v. Curtiss*.¹⁴⁸ In other words, if this is the jurisdictional foundation, section 1332 of title 28, the general diversity of citizenship statute, controls. Hence the jurisdictional minimum of in excess of \$10,000 exclusive of interest and costs is also required.¹⁴⁹

In *Hunter v. Federal Life Ins. Co.*,¹⁵⁰ the Eighth Circuit sustained the jurisdiction of the federal court to entertain an interpleader action where the claimants were all citizens of Arkansas and the stakeholder was a citizen of Illinois, the matter in controversy being in excess of the jurisdictional minimum. The court said:

While the question of federal jurisdiction under such circumstances . . . will not be finally put to rest until decided by the Supreme

¹⁴⁶ See text accompanying notes 100-01 *supra*.

¹⁴⁷ *Ibid.*

¹⁴⁸ 7 U.S. (3 Cranch) 267 (1806).

¹⁴⁹ See 28 U.S.C. § 1332 (1958).

¹⁵⁰ 111 F.2d 551 (8th Cir. 1940).

Court of the United States (see *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 73, 60 S. Ct. 44, 84 L. ed. —),¹⁵¹ we think that the right of a stakeholder to be relieved of vexation, the danger of multiple liability, and the responsibility of undertaking to decide, at his peril, which of two or more adverse claimants is entitled to money or property in his hands, has the effect of making him a real party in interest.¹⁵²

However, under rule 22(1) there seems to be no reason why jurisdiction in a proper case may not be invoked on the basis of a federal question.¹⁵³

(2) *Process*:

As would be logically expected, process of the district court in equitable interpleader as expanded by rule 22(1) is, as in the usual diversity of citizenship case, governed by rule 4(f): the summons may be served only "within the territorial limits of the state in which the district court is held" This conclusion is based on the Supreme Court decision in *New York Life Ins. Co. v. Dunlevy*,¹⁵⁴ holding that interpleader is not an in rem proceeding, and that a binding judgment cannot be rendered against anyone over whom personal jurisdiction cannot be acquired. Section 1655 of title 28, however, has been invoked in a few situations. This section, to the extent pertinent, provides that: "In an action in a district court to enforce any lien upon or

¹⁵¹ This case is discussed in note 50 *supra*.

¹⁵² *Hunter v. Federal Life Ins. Co.*, 111 F.2d 551, 555 (8th Cir. 1940). Obviously no reference was made by the court to rule 22(1) since the action had been commenced on October 23, 1935, almost 3 years before the effective date of the Federal Civil Rules. See also *Kerrigan's Estate v. Joseph E. Seagram & Sons, Inc.*, 199 F.2d 694, 696-97 (3d Cir. 1952); *United States v. Sentinel Fire Ins. Co.*, 178 F.2d 217 (5th Cir. 1949); *Rossetti v. Hill*, 162 F.2d 892 (9th Cir. 1947); *Security Trust & Sav. Bank v. Walsh*, 91 F.2d 481, 483 (9th Cir. 1937); *Consolidated Underwriters v. Bradshaw*, 136 F. Supp. 395 (W.D. Ark. 1955); *E. C. Robinson Lumber Co. v. Fort*, 112 F. Supp. 242 (E.D. Mo. 1953); *Massachusetts Bonding & Ins. Co. v. City of St. Louis*, 109 F. Supp. 137 (E.D. Mo. 1952); *Fidelity & Cas. Co. v. Wilson*, 105 F. Supp. 454, 456 (E.D.S.C. 1952).

¹⁵³ 28 U.S.C. § 1331 (1958). See *Bank of China v. Wells Fargo Bank & Union Trust Co.*, 209 F.2d 467, 473-74 (9th Cir. 1953). See also *Sun Shipbuilding & Dry-Dock Co. v. Industrial Union*, 95 F. Supp. 50 (E.D. Pa. 1950).

¹⁵⁴ 241 U.S. 518 (1916). See also *Hanna v. Stedman*, 230 N.Y. 326, 130 N.E. 566 (1921).

claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district, where any defendant cannot be served within the State, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a day certain.”¹⁵⁵

A case where this section was relied upon is *A/S Krediid Pank v. Chase Manhattan Bank*.¹⁵⁶ Krediid was an alien banking corporation organized under the laws of Estonia, a country occupied by Soviet Russia in 1940. This occupation existed except for the period of 1941-1944 when the country was occupied by the Germans. The United States has never recognized the occupation of Estonia. Prior to the occupation, Krediid had its domicile and head office in Tallinn, Estonia. At the time of the occupation, Krediid had on deposit to its account in New York with the then Chase National Bank, now the Chase Manhattan Bank, a New York corporation, the sum of \$123,000. It had been a depositor in Chase since 1935. When Estonia was occupied, these funds were blocked by Executive Order. For some years prior to 1940, Krediid had furnished Chase with circulars containing specimen signatures of the persons authorized to draw on behalf of Krediid. Two of these persons who were so authorized at the time of the occupation were A and B, both of whom escaped from Estonia and went to Sweden after the occupation. On December 10, 1940, five months after the Soviet occupation, Chase received a so-called “tested” cable from Tallinn, signed “A/S Krediid Pank,”

¹⁵⁵ The balance of this section follows: “Such order shall be served on the absent defendant personally if practicable, wherever found, and also upon the person or persons in possession or charge of such property, if any. Where personal service is not practicable, the order shall be published as the court may direct, not less than once a week for six consecutive weeks.

“If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the State, but any adjudication shall, as regards the absent defendant without appearance, affect only the property which is the subject of the action. When a part of the property is within another district, but within the same state such action may be brought in either district.

“Any defendant not so personally notified may, at any time within one year after final judgment, enter his appearance, and thereupon the court shall set aside the judgment and permit such defendant to plead on payment of such costs as the court claims just.” 28 U.S.C. § 1655 (1958).

¹⁵⁶ 155 F. Supp. 30 (S.D.N.Y. 1957).

directing it to close the Krediid account and place the balance to the account of Gosbank, the cable address for the State Bank of the U.S.S.R. in Moscow, and to advise Krediid and the so-called "beneficiary" when this had been done.¹⁵⁷ Chase applied to the Treasury Department for a license permitting it to dispose of the Krediid account in compliance with the tested cable but no such license was ever issued. Thereafter, *A* and *B* wrote to Chase from Sweden that an extraordinary meeting of the shareholders of Krediid had been held in Stockholm, Sweden, at which meeting the domicile of Krediid was moved to Stockholm, the authority of *A* and *B* confirmed to sign for Krediid, and a power of attorney granted to *A* and *B* to act on Krediid's behalf. They also wrote that a second meeting of the shareholders was held in 1950 at the Estonian Consulate in New York City, where the authority of *A* and *B* to act was again confirmed, and requested Chase to apply to the Treasury Department to unblock the account. Chase replied, setting forth all the circumstances, and stated that it could not make payment if the account should be unblocked, without a prior judicial determination.

Krediid then brought suit in the United States District Court for the Southern District of New York for a declaratory judgment that *A* and *B* were the only authorized agents of Krediid in the United States, and entitled to dispose of the funds on deposit "in whatever manner that they deem proper in promotion of the interests" of Krediid once the government had unblocked the funds. In its answer, Chase set up a counterclaim by way of defensive interpleader, averring that it held no interest in the funds (now consisting of \$115,000 in United States Treasury bills and a credit balance of \$12,581.65) except for costs, expenses and attorneys' fees. It set up in detail the facts of the adverse claims made upon it, and asked that *A*, *B*, John Doe and Richard Roe, as allegedly authorized representatives of Krediid who directed the sending of the tested cable and the State Bank of the U.S.S.R., be made parties to the action to respond to the

¹⁵⁷ *A* "tested" cable is a cable sent in a private code of the sender (in this case Krediid) of which Chase had a copy.

complaint and the counterclaim, and interplead their respective claims. Chase also asked that the court adjudge which of the parties was authorized to act on behalf of Krediid. Service by publication on these defendants was sought pursuant to section 1655. The district court held:

The securities now held by Chase for this account plainly constitute personal property within the district ¹⁵⁸ to which a claim has been asserted. None of the interpleaded defendants are within the State of New York. Chase appears to be entitled to an order directing the absent defendants to appear and plead under Section 1655.

But it does not necessarily follow from this that Chase is entitled to serve all of these parties by publication. Section 1655 ¹⁵⁹ provides that the order requiring absent defendants to appear or plead "shall be served on the absent defendant personally, if practicable, *wherever found*." Only "where personal service is not practicable" is service of the order by publication authorized. . . .

In my view Chase has not shown that personal service on . . . [the named parties], is not practical within the meaning of the statute. It is true that they are not within this State and probably not within the country. But the whole procedure provided by the Section is predicated on the absence of the defendants to be served from the jurisdiction, and a mere absence in itself is not sufficient to show that personal service is impractical. Under the scheme of this statute, expressly authorizing service on defendants "*wherever found*," there appears to be no reason why the order should not be served on the named defendants to be interpleaded in the places where they reside or can be found. These places must be known to or are easily discoverable by Chase. The provision . . . [of the section] permitting final judgment to be set aside within a year if service is made by publication rather than personally emphasizes the necessity for making a strong showing that it is not practical to serve the defendants personally. Thus, the order to be entered here should provide for personal service on all the interpleaded defendants with the exception of John Doe and Richard Roe, who may be served by publication. This is, of course, without prejudice to a further application by Chase for leave to serve by publication in the event that any of the defendants cannot be found.¹⁶⁰

¹⁵⁸ See text of § 1655 accompanying note 155 *supra*, providing, *inter alia*, for venue in this type of action.

¹⁵⁹ See note 155 *supra*.

¹⁶⁰ A/S Krediid Pank v. Chase Manhattan Bank, 155 F. Supp. 30, 36-37

In *Aetna Life Ins. Co. v. Du Roure*,¹⁶¹ there were four actions, each brought by a different insurance company to interplead the claimants to the insurance proceeds of certain annuity policies issued to one Patenotre, a citizen of France, since deceased. These interpleader actions were commenced and the insurance proceeds paid into the registry of the court about two and a quarter years after the death of the insured. The real issue was whether plaintiffs were justified in waiting that long period before instituting interpleader.¹⁶² Plaintiffs contended that they were unable to obtain jurisdiction over all the claimants in a single action, since at least one of the necessary parties was beyond the reach of process until July 1953. Defendants contended that there was no reason for delay because, once the fund was deposited in court, the interpleader would become an in rem proceeding in which the insurance companies could have obtained their discharges against all the world. The court disagreed with this contention, feeling bound by the Supreme Court decision in *New York Life Ins. Co. v. Dunlevy*¹⁶³ which held that interpleader is not an in rem proceeding and that a binding judgment cannot be rendered against any one over whom personal jurisdiction cannot be acquired. The *Republic of China v. American Express Co.* decisions,¹⁶⁴ the court said, "perhaps look the other way but that case involved a bank account which, in deference to the popular conception, is often treated by

(S.D.N.Y. 1957). The case relied on by the court is *Republic of China v. American Express Co.*, 95 F. Supp. 740 (S.D.N.Y. 1951), *aff'd*, 195 F.2d 230 (2d Cir. 1952), *remanded*, 108 F. Supp. 169 (S.D.N.Y. 1952). This case also involved a defensive interpleader; the matter in dispute was a bank account and not securities as in the *Kredit* case. It is rather difficult to bring such a bank account within the provisions of § 1655. The court, however, held it to be a "special fund" which the defendant was ready and willing to pay into court, if it be required, thus, in effect, turning an in personam suit into an in rem proceeding.

¹⁶¹ 123 F. Supp. 736 (S.D.N.Y. 1954).

¹⁶² Defendants contended that by failing to take prompt action plaintiffs (1) wrongfully withheld payment of the insurance proceeds and subjected themselves to liability for wrongful detention of the funds, and forfeited the usual allowance of lawyers' fees accorded to totally disinterested involuntary stakeholders, or (2) were unjustly enriched.

¹⁶³ 241 U.S. 518 (1916). See also *Hanna v. Stedman*, *supra* note 154.

¹⁶⁴ *Supra* note 160.

the law as 'money in the bank' rather than a mere chose in action." ¹⁶⁵

It is interesting to note how New York State, also faced with the Supreme Court decision in *Dunlevy* ¹⁶⁶ and its own Court of Appeals decision in *Hanna v. Stedman*,¹⁶⁷ has attempted to turn an in personam claim for a sum of money owing by the stakeholder into a claim against a *res*. Section 286(2) of the New York Civil Practice Act provides:

Where a stakeholder is otherwise entitled to proceed under section two hundred eighty-five for the determination of a right to, interest in or lien upon a sum of money, whether or not liquidated in amount, payable in the state under or on account of a contract, express or implied, or claimed as damages for the alleged unlawful retention of specific real or personal property within the state, and the stakeholder is a natural person having a permanent residence or an established place of business in the state or a firm or corporation conducting business in the state and subject to the service of process, he may apply to the court either before action or at any time during the pendency of an action commenced against such stakeholder, upon good cause shown, for an order permitting him to deliver or pay into the court or to a person designated by the court or to retain to the credit of the action said sum of money or part thereof to be disposed of in accordance with further order or final judgment. The court shall make such order upon satisfactory proof by affidavit or otherwise of the facts alleged in the stakeholder's application regarding stakeholder's compliance with the requirements of this subdivision.

Upon compliance with the order of the court, such sum of money shall be deemed to be property within the state for the purpose of this subdivision and subdivision four of section two hundred thirty-two.¹⁶⁸

Section 232 of the Civil Practice Act, specifying the actions in which an order for service by publication may be made, was simultaneously amended by adding subdivision 4 which provides that such order may be granted: "Where an order has been granted pursuant to subdivision two of section

¹⁶⁵ *Aetna Life Ins. Co. v. Du Roure*, 123 F. Supp. 736, 740 (S.D.N.Y. 1954).

¹⁶⁶ *New York Life Ins. Co. v. Dunlevy*, 241 U.S. 518 (1916).

¹⁶⁷ 230 N.Y. 326, 130 N.E. 566 (1921).

¹⁶⁸ N.Y. CIV. PRAC. ACT § 286(2).

two hundred eighty-six, and a cause of action described therein is alleged in the pleading.”¹⁶⁹

These sections cover both offensive and defensive interpleader. It still remains to be seen how the courts will treat this revision in view of the constitutional question involved.¹⁷⁰

Statutory interpleader, on the other hand, is governed by section 2361 of title 28, which provides that in any civil action of interpleader or in the nature of interpleader brought under section 1335, “a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action Such process . . . shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.”

Thus, in *Hagan v. Central Ave. Dairy, Inc.*, a stakeholder brought a statutory interpleader suit in a District Court in California against one claimant, a citizen of California, and another, a citizen of Arizona. The District Court had jurisdiction of the Arizona citizen served in Arizona in connection with the adjudication of their claims, if any, to the fund deposited in court.¹⁷¹ In this connection, the question has arisen whether such jurisdiction extends beyond that fund or property.

(a) *Cross-Claims Between Claimants.*—Federal Rules of Civil Procedure, Rule 13(g), provides that “a pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action.”

¹⁶⁹ N.Y. CIV. PRAC. ACT § 232(4).

¹⁷⁰ See Legislation, 19 ALBANY L. REV. 145, 148-51 (1955).

¹⁷¹ 180 F.2d 502 (9th Cir. 1950).

(b) *Cross-Claims Under Title 28 U.S.C., Section 1335.*—In the *Hagan*¹⁷² case, discussed above, it further appeared that the Arizona defendant had made no appearance or answer, and so the escrow deposit was awarded to the California defendant. In the meantime, the California defendant had filed a cross-claim for money damages growing out of the same contract as the escrow deposit. The Arizona defendant then appeared specially and objected to the court's jurisdiction over it in respect of the cross-claim, which objection was sustained and the cross-claim dismissed. On appeal the Court of Appeals affirmed, stating:

We think the District Court of California did not have personal jurisdiction over the absent non-consenting Arizona corporation except to the extent of that corporation's interest in the escrow fund. That the court had jurisdiction that far is clear from the statute. Furthermore, if Congress had so provided, we think there is no reason why process from the United States District Court could not run country-wide. But Congress has not so provided, generally, and a District Court's power to hear and decide cases involving personal liability of an individual is limited to those served within the state where the court sits. The absentee defendant was not personally before the court here. The court could adjudicate rights in the fund, but could affect no other interest of the absentee.

It would be a startling conclusion, we think, to give Rule 13(g) and the Interpleader statute the effect of enlarging the jurisdiction of a court to create rights going beyond those to the fund which is the subject of the interpleader action. Such a construction would go far beyond the situation which called for the Interpleader statute in the first place.¹⁷³

Apparently concurring in the views expressed in the *Hagan* case is *Coastal Air Lines, Inc. v. Dockery*,¹⁷⁴ decided by the Eighth Circuit. There, an insurer of an aircraft, a Pennsylvania corporation, brought statutory interpleader in the federal court in Arkansas against the owner and the lessee of an airplane which had crashed while in the posses-

¹⁷² *Ibid.*

¹⁷³ *Id.* at 503. See 29 N.C.L. Rev. 68 (1950). See also *Great Lakes Auto Ins. Group v. Shepherd*, 95 F. Supp. 1 (W.D. Ark. 1951).

¹⁷⁴ 180 F.2d 874 (8th Cir. 1950).

sion of the lessee. Both the owner, a citizen of Arkansas, and the lessee, a Pennsylvania corporation, appeared and claimed the insurance. The lessee asserted that it had purchased the aircraft through the exercise of an option which had been in the lease. The owner cross-claimed against the lessee for rent under the lease contract, alleging refusal of the lessee to purchase. At the trial, the adverse claimants stipulated that the sole questions for decision were: (1) whether the lessee had exercised its purchase option; and (2) whether the lessee was indebted to the lessor for unpaid rent. On appeal from a judgment in favor of the owner on his cross-claim for rent, the lessee contended, *inter alia*, that the court was without jurisdiction to entertain the cross-claim by one interpleaded party against another, but was limited to a disposition of the fund in court. In affirming the lower court judgment, the Court of Appeals held that here, contrary to the jurisdictional facts in the *Hagan* case, the lessee appellant had appeared in the interpleader action in the federal District Court to assert its claim to the fund in the court registry, had interposed no objection to the jurisdiction of the court on the cross-claim, and in fact had stipulated that the question presented by the cross-claim was before the court for decision. Accordingly, the lessee had "waived any objection it might have raised to the venue of the action on the cross-claim or to the personal jurisdiction of the Arkansas federal court over it." 175

¹⁷⁵ *Coastal Air Lines, Inc. v. Dockery*, 180 F.2d 874 (8th Cir. 1950). The court also held that there was no question but that the cross-claim came within the terms of rule 13(g), and stated: "The rights of the parties to the action on the cross-claim were controlled by State law, but questions of jurisdiction and procedure of the Federal Court are determined by Federal law. The sum involved in the cross-claim was less than the required jurisdictional sum required in a diversity case. Rule 13(g) neither extends nor limits the jurisdiction of the Federal Court nor the venue of actions therein, Rule 82, Federal Rules of Civil Procedure, but cross-claims permitted by the Federal Rules of Civil Procedure are regarded as ancillary to the principal claim to which they are related and need not involve the jurisdictional sum necessary in an original or independent action in the District Court." *Id.* at 877. See *Moseley v. Sunshine Biscuits, Inc.*, 107 F. Supp. 164 (W.D. Mo. 1952), where the court said: "In the case of *Coastal Air Lines v. Dockery* . . . the Court of Appeals, this Circuit, strongly intimated that the courts would have no jurisdiction save in those cases where the nonresident parties waive venue

(c) *Cross-Claims Under Rule 22(1)*.—Since rule 22(1) is governed for jurisdictional purposes by section 1332 of title 28, cross-claims asserted by adverse claimants who have been served with process within the court's jurisdiction should not present serious problems if such cross-claims arise out of the same transaction or occurrence which is the subject matter of the main suit.

[W]here the court has jurisdiction of the subject matter of an action, the defendants submitting themselves to the court thereby confer upon it jurisdiction over their persons. And such parties may likewise by cross-complaint submit ancillary suits to the court, and the court will entertain the ancillary suits although it could not have entertained them as independent suits.¹⁷⁶

(3) *Venue Under Statutory Interpleader:*

Here the governing section is section 1397 of title 28, which provides that "any civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside."

The earlier statutes, those of 1917 and of 1926,¹⁷⁷ had been rather complicated in dealing with venue, with proviso superimposed on proviso, and difficulties had accordingly arisen.¹⁷⁸ These have been removed. Under the present act, while venue may be waived by consent of the parties, the objection is valid if it is timely, and the action will be dismissed.¹⁷⁹

in cases such as the one at bar. An identical ruling was made by the Ninth Circuit Court of Appeals in *Hagan v. Central Avenue Dairy, Inc.* . . ." *Id.* at 165. Consider also a somewhat similar question discussed in *Consolidated Underwriters v. Bradshaw*, 136 F. Supp. 395, 397-98 (W.D. Ark. 1955). See also Annot., *Federal Interpleader—Cross Claim*, 17 A.L.R.2d 741 (1951); *Mayer v. Chase Nat'l Bank*, 165 F. Supp. 287 (S.D.N.Y. 1958).

¹⁷⁶ *Fidelity & Cas. Co. v. Wilson*, 105 F. Supp. 454, 457 (E.D.S.C. 1952). *Cf. Walmac Co. v. Isaacs*, 220 F.2d 108 (1st Cir. 1955).

¹⁷⁷ Act of Feb. 22, 1917, ch. 113, 39 Stat. 929; Act of May 8, 1926, ch. 273, 44 Stat. 416.

¹⁷⁸ See *Bankers' Life Co. v. Ebbert*, 48 F.2d 907 (W.D. Pa. 1928); *New York Life Ins. Co. v. Kennedy*, 253 Fed. 287 (S.D. Fla. 1918); *Penn Mut. Life Ins. Co. v. Henderson*, 244 Fed. 877 (N.D. Fla. 1917).

¹⁷⁹ *Moseley v. Sunshine Biscuits, Inc.*, *supra* note 175.

A question arises when a claimant is a corporation. Where does it "reside" for venue purposes under section 1397 which may be termed a special venue provision? The Supreme Court held many years ago that a corporation is a "resident" only of the state in which it was incorporated and of the district in that state in which its principal office was located.¹⁸⁰ Section 1391 of title 28, the general venue section, in subsection (c), however, provides that "a corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes." This section should supplement section 1397 although the Supreme Court's decision in *Fourco Glass Co. v. Transmirra Prods. Corp.*,¹⁸¹ construing the unique patent infringement section 1400(b),¹⁸² held:

We think it is clear that § 1391(c) is a general corporation venue statute, whereas § 1400(b) is a special venue statute applicable, specifically, to *all* defendants in a particular type of action, *i.e.*, patent infringement actions. In these circumstances the law is settled that "However inclusive may be the general language of a statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . .'"¹⁸³

Surely section 1397 does present the special reasons which prompted the enactment of section 1400(b) and its predecessor statute.¹⁸⁴ The primary purpose of the interpleader provisions is to help the stakeholder in avoiding double liability and vexatious actions.

¹⁸⁰ *Shaw v. Quincy Mining Co.*, 145 U.S. 444 (1892), reaffirmed in *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222 (1957).

¹⁸¹ *Supra* note 180.

¹⁸² 28 U.S.C. § 1400(b) (1958) reads as follows: "Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business."

¹⁸³ *Fourco Glass Co. v. Transmirra Prods. Corp.*, *supra* note 180, at 228.

¹⁸⁴ See text accompanying notes 177-79 *supra*.

(4) *Venue Under Rule 22(1):*

Section 1391 of title 28, the general venue section, controls:

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law.

(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

(d) An alien may be sued in any district.

This subject obviously requires consideration of so many problems particularly in multi-party suits that it cannot be considered in this article on interpleader.

(5) *Deposit in Court Registry Under Statutory Interpleader:*

Since the Interpleader Act of 1926,¹⁸⁵ statutory interpleader has required payment into the court registry; the act of 1936¹⁸⁶ added the provision for substitution of a bond. The present act requires as a condition to jurisdiction that

the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.¹⁸⁷

¹⁸⁵ Act of May 8, 1926, ch. 273, 44 Stat. 416.

¹⁸⁶ Act of Jan. 20, 1936, ch. 13, 49 Stat. 1096.

¹⁸⁷ 28 U.S.C. § 1335(a)(2) (1958).

In *Edner v. Massachusetts Mut. Life Ins. Co.*,¹⁸⁸ the stakeholder insurance company had brought defensive interpleader under the act of 1936¹⁸⁹ against the trustee in bankruptcy of one Lum, the insured under three life insurance policies of the face value of \$42,500, and against the estate of one Mathews. Lum, prior to bankruptcy, had lodged with the insurance company collateral assignments of the policies to Mathews purporting to be given as security for indebtedness. Thereafter Mathews notified it, claiming to be the absolute owner of the policies under an agreement of purchase and sale made with Lum five days before the collateral assignments were executed. Mathews subsequently died, and his estate in the interpleader wanted to keep the policies in force for their full face value. Lum's trustee in bankruptcy, claiming that Lum's indebtedness had been satisfied out of other property, asserted the right to the full cash surrender value of the policies. The insurance company deposited in the registry of the court the cash surrender value of the policies amounting to \$18,972.50. One of the questions raised was whether this deposit complied with the statute. In answering in the negative, the Third Circuit said:

In the present case the amount deposited was \$18,972.50, the cash surrender value of the policies. This, however, is not the amount with respect to which the controversy between these parties exists. While it is the amount claimed by the trustee, who desires to cancel the policies and receive their present value, it is not the amount claimed by the executrix, who does not want any cash now but does want to keep the policies in force for their full face value of \$42,500. No one here questions the right of the trustee to receive the cash surrender value if he is able to establish his title to the policies. . . . The award of title to either party will carry with it the incidental rights of ownership, . . . either to surrender the policies and receive their present value or to retain them in force for future benefits.

It may be suggested that the Company should have deposited \$42,500, the face amount of the policies. However, neither party to the controversy is presently entitled to that sum or claims it. By the deposit of that sum the Company could not relieve itself of future

¹⁸⁸ 138 F.2d 327 (3d Cir. 1943).

¹⁸⁹ Act of Jan. 20, 1936, 49 Stat. 1096.

liability under the policies if the owner for any reason desired to keep them in force. The impracticability of any deposit by the insurance company under the circumstances of this case was recognized in the report of the Senate Committee on the Judiciary from which we have already quoted. As we have seen, the Committee pointed out that the bill proposed to grant to a plaintiff in interpleader the right to file a bond instead of making a deposit and that this was done, *inter alia*, for the purpose of providing a practicable procedure for the type of case which we are now considering. Under the statute the bond is conditioned upon "the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy." The bond thus will secure performance by the insurance company of a decree that the successful party in the interpleader be recognized as the owner of the policies and, therefore, entitled, free of all claims by the unsuccessful party, to all the rights and benefits conferred by the policies. . . .

In the present case . . . the Company did not file a bond but instead deposited the cash surrender value of the policies. We hold that under the circumstances disclosed in this case this was not a sufficient compliance with the statute. . . .

The making of the deposit or giving of a bond is . . . made a condition precedent to the acquisition by the court of jurisdiction to direct the extra territorial service of process upon a nonresident defendant and to take further steps in the cause. Since in the present case a deposit was inappropriate and a bond was not filed the court was without jurisdiction to grant the preliminary injunction appealed from.¹⁹⁰

A similar contention in respect of specific property was presented in *Austin v. Texas-Ohio Gas Co.*¹⁹¹ The Fifth Circuit there stated

that the plaintiff seeks a determination of rights in 95,000 shares

¹⁹⁰ *Edner v. Massachusetts Mut. Life Ins. Co.*, 138 F.2d 327, 329-30 (3d Cir. 1943). See *Standard Sur. & Cas. Co. v. Baker*, 105 F.2d 578 (8th Cir. 1939); *John Hancock Mut. Life Ins. Co. v. Kegan*, 22 F. Supp. 326, 328 (D. Md. 1938). Cf. *United States v. Sentinel Fire Ins. Co.*, 178 F.2d 217 (5th Cir. 1949). The court in the *Edner* case also held that the district courts are authorized under statutory interpleader to take jurisdiction of a suit involving a life insurance policy where one of the claimants does not claim any present sum or benefit under the policy but merely asserts his right to the possession of the policy as owner, and to claim in the future such benefits under the policy as it may afford to him and as he may elect to claim.

¹⁹¹ 218 F.2d 739 (5th Cir. 1955).

but tendered into court only the 23,700 shares still within its possession. There are at least two answers to appellants' contention. In the first place, the plaintiff had some control as to the untendered balance of 71,300 shares. Having issued these to certain defendants in trust for certain purposes under the settlement with Austin, it no longer had a possessory or proprietary interest in them, but nevertheless did have the power to refuse to transfer the certificates on its books if such transfers were not in accordance with the purpose for which they were given, or were in violation of the trust. Plaintiff declared in its complaint that it would not make any transfers except on the order of the court and it specifically tendered "such right or control" which it had over the remaining shares.

In the second place, this case can be viewed as an action in the nature of interpleader concerning *these* 23,700 shares, in which it is alleged that each of the defendants has some claim. It seems the only natural construction, in fact, of 28 U.S.C. § 1335(a) (2) that this is the "property" which it is necessary to deposit in court, in a case such as this involving specific property and not simply a claim for money. The applicable words of the statute are: "The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society *having in his or its custody or possession . . . property* of the value of \$500 or more . . . if . . . the plaintiff has deposited *such . . . property . . .* into the registry of the court . . ." The words "such property" logically refer to property in plaintiff's custody or possession; it follows that the statute does not require a plaintiff, in order to obtain jurisdiction, to perform the impossible condition of depositing into court specific property which he does not have in his possession, provided of course that he can and does deposit money or specific property in his possession of the value of \$500 or more, and which is the subject of conflicting claims of the defendants.¹⁹² Nor does it deprive the court

¹⁹² "That this correctly states the statutory requirement is supported by *Treines v. Sunshine Mining Co.*, 308 U.S. 66, 60 S. Ct. 44, 47, 84 L. Ed. 85. Although the Supreme Court did not discuss the adequacy of the deposit made in that case to confer jurisdiction under 28 U.S.C. § 1335, it necessarily held that the deposit was sufficient, in affirming the Court of Appeals' decision. In that opinion of the Court of Appeals for the 9th Circuit, 99 F.2d 651, at page 653, it appears that the plaintiff was not in possession or custody of the shares of stock claimed by defendants, and tendered only the accrued dividends on those shares at the time it commenced the action. The stock certificates were later deposited into court during the pendency of the action, evidently by the several defendants. Thus the case seems clear authority that a plaintiff is not required in an action under 28 U.S.C. § 1335, to deposit

of its statutory jurisdiction, perfected by the deposit of this property into court, for the plaintiff to allege that the 23,700 shares are part of a larger block of 95,000, and that the total rights of the several parties cannot finally be determined unless the court incidentally considers the interests of the various defendants in the larger block of stock. There is nothing inconsistent with this rationale in the cases holding that a condition precedent to jurisdiction under the statute is absent when plaintiff deposits a sum of money smaller than that which is in fact claimed by some of the claimants; because the words of the statute applicable in those cases say that the district court will have jurisdiction when the plaintiff has "... issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more, or providing for the delivery or payment or the loan of money . . . of such amount or value, or [is] under any obligation written or unwritten to the amount of \$500 or more, if . . . the plaintiff has . . . *paid the amount of or the loan or other value of such instrument or the amount due* under such obligation into the registry of the court" Obviously this requirement is quite different. Where claims for a sum of money only are involved, payment of the entire sum (or giving of a bond) is a condition precedent to the court's jurisdiction. But when claims for specific property are involved the statute imposes the condition of depositing only the specific property in plaintiff's possession, and the further condition that such property be of the value of \$500 or more.¹⁹³

(6) *Deposit in Court Registry Under Rule 22(1):*

Although there is no express provision in rule 22(1)¹⁹⁴ for deposit or offer of deposit in the court registry, there are cases under rule 22(1) where the stakeholder has followed the equity principle of depositing the sum in the registry to

specific chattels not in his possession or custody (or a bond in lieu thereof) as a condition to commencing the action, provided that he is able to comply with the deposit requirement by tendering other money or property involved in the dispute, and of the value of \$500 or more." *Austin v. Texas-Ohio Gas Co.*, 218 F.2d 739, 745 n.4 (5th Cir. 1955).

¹⁹³ *Id.* at 744-45.

¹⁹⁴ The Official Forms 18 (Complaint for Interpleader and Declaratory Relief) and 21 (Answer to Complaint Set Forth in Form 8, with Counterclaim for Interpleader) do not make any reference to a deposit in the court registry. In fact, rule 22(1) and the forms indicate that the action contemplated is in the nature of a declaratory action.

terminate his liability.¹⁹⁵ Where, however, the stakeholder is not completely disinterested and, therefore, stays in the case, there is authority that the requirement of deposit into court never existed,¹⁹⁶ and that "the necessity of a deposit in the generality of cases may be a technicality carried over from the common law, serving no function which could not be served better by the flexible doctrine of 'clean hands' and 'doing equity.'"¹⁹⁷

(7) *Injunctive Relief Under Statutory Interpleader:*

The Interpleader Act of 1926¹⁹⁸ amended the 1917 Interpleader Act¹⁹⁹ to provide as follows: "Notwithstanding any provision of the Judicial Code to the contrary, said [district] court shall have power to issue its process for all claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court . . ."²⁰⁰ The Supreme Court has held that the provisions of former Section 265 of the Judicial Code²⁰¹—a limitation of the power of the federal courts to prevent needless friction between state and federal courts—was not applicable.²⁰² The Interpleader Act of 1936²⁰³ contained a similar provision, and with reference thereto, the Supreme Court held:

¹⁹⁵ See *Equitable Life Ins. Co. v. Dinoff*, 72 F. Supp. 723, 725 (D. Kan. 1947); *Helis v. Vallee*, 34 F. Supp. 467, 470 (E.D. La. 1940). See also *Jersey Ins. Co. v. Altieri*, 5 N.J. Super. 577, —, 68 A.2d 852, 853 (Ch. 1949). See rule 67 providing for deposit in court generally, and *Bank of China v. Wells Fargo Bank & Union Trust Co.*, 209 F.2d 467 (9th Cir. 1953).

¹⁹⁶ *Dorn v. Fox*, 61 N.Y. 264 (1874); *Mohawk & Hudson R.R. v. Clute*, 4 Paige 384 (N.Y. Ch. 1834); *Frumer, On Revising the New York Interpleader Statutes*, 25 N.Y.U.L. REV. 737, 770 (1950); MACLENNAN, INTERPLEADER 339-40 (1901).

¹⁹⁷ *Austin v. Texas-Ohio Gas Co.*, *supra* note 192, at 746 n.7.

¹⁹⁸ Act of May 8, 1926, ch. 273, 44 Stat. 416.

¹⁹⁹ Act of Feb. 22, 1917, ch. 113, 39 Stat. 929.

²⁰⁰ Act of May 8, 1926, ch. 273, 44 Stat. 416.

²⁰¹ "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." Act of March 3, 1911, ch. 321, § 266, 36 Stat. 1162.

²⁰² *Dugas v. American Sur. Co.*, 300 U.S. 414, 428-29 (1937) (Interpleader Act of 1926).

²⁰³ Act of Jan. 20, 1936, 49 Stat. 1096.

That section [265] forbids a United States court from staying proceedings in any state court. The Interpleader Act, passed subsequently, however, authorizes the enjoining of parties to the interpleader from further prosecuting any suit in any state or United States court on account of the property involved. Such authority is essential to the protection of the interpleader jurisdiction and is a valid exercise of the judicial power. Section 265 is a mere limitation upon the general equity powers of the United States courts and may be varied by Congress to meet the requirements of federal litigation.²⁰⁴

The injunction provisions of the 1936 act are now found, with changes in phraseology, in section 2361 of the 1948 codification of title 28.²⁰⁵ Also, Federal Rules of Civil Procedure, Rule 65, which governs the issuance of injunctions generally, specifically provides in subdivision (e) that these rules "do not modify . . . the provisions of Title 28, U.S.C. § 2361, relating to the preliminary injunctions in actions of interpleader or in the nature of interpleader." But it would seem that rule 65 applies to the permanent injunction since subdivision (e) only excepts the preliminary injunction.

The obvious should not be overlooked, namely, that an injunction will only issue if the district court has jurisdiction of the interpleader under section 1335 of title 28. This subject was considered above in connection with deposit in court registry.²⁰⁶ Thus, where the requisite deposit has not been made or a bond furnished, an injunction will be

²⁰⁴ *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 74 (1939). See also *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 132-34 (1941).

²⁰⁵ The section reads as follows: "In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.

"Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment."

²⁰⁶ Text accompanying notes 186-97 *supra*.

denied.²⁰⁷ Of course, the required diversity among claimants and monetary minimum must be present.

(8) *Injunctive Relief Under Civil Rule 22(1)*:

Section 2361 does not expressly apply to interpleader under rule 22(1), since the section is limited by its terms to "civil actions of interpleader or in the nature of interpleader under section 1335 of this Title."²⁰⁸ Accordingly, we must look elsewhere for authority to grant temporary or permanent injunctions, since if interpleader is to be efficient, the court must be given the power to enjoin suits or other proceedings by the various claimants. Although there should be no lack of equity powers where such suits or proceedings are solely in the federal courts, the so-called Anti-Injunction Act²⁰⁹ presents problems where the suits or proceedings sought to be enjoined are or may be in the state courts. This statute, until the 1948 amendment of title 28, read as follows: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."²¹⁰ This act was clearly applicable to interpleader under rule 22(1).²¹¹ In the 1948 codification of title 28, this act has become section 2283 and reads as follows: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." The reviser's note to this section says that:

The exceptions specifically include the words "to protect or effectuate its judgments," for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of

²⁰⁷ *Austin v. Texas-Ohio Gas Co.*, 218 F.2d 739 (5th Cir. 1955); *Edner v. Massachusetts Mut. Life Ins. Co.*, 138 F.2d 327 (3d Cir. 1943).

²⁰⁸ See statute cited note 205 *supra*.

²⁰⁹ 28 U.S.C. § 2283 (1958).

²¹⁰ Act of March 3, 1911, ch. 321, § 266, 36 Stat. 1162.

²¹¹ See *General Exporting Co. v. Star Transfer Line*, 136 F.2d 329 (6th Cir. 1943).

cases and controversies fully adjudicated by such courts. (See *Toucey v. New York Life Insurance Co.*, 62 S. Ct. 139, 314 U.S. 118, 86 L. Ed. 100. A vigorous dissenting opinion . . . notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change).

Therefore the revised section restores the basic law as generally understood and interpreted prior to the *Toucey* decision.

It would seem to follow that, where a district court has entered final judgment in an interpleader under rule 22(1), it is also empowered to enjoin the claimants from taking further proceedings in a state court inconsistent with its judgment. What about the power of the district court to grant a preliminary injunction against actions or proceedings in a state court? Can this power be bottomed on the second clause of section 2283, namely, "or where necessary in aid of its jurisdiction"? Since the interpleader under rule 22(1) can usually be maintained only if the claimants are served within the state where the federal action has been brought, it should not run counter to the Anti-Injunction Act to enjoin such claimants preliminarily. These questions, however, as far as can be ascertained, have not yet been passed on by the courts.²¹²

(9) *Discharge of Stakeholder Under Statutory Interpleader:*

Section 2361 of title 28 also provides that the court "may discharge the plaintiff from further liability" It would seem, however, that such discharge should not be granted in the first stage of interpleader,²¹³ except in the case of strict interpleader, *i.e.*, where the stakeholder is completely disinterested. "Since this is a case of an action 'in the nature of interpleader,' the plaintiffs should not be discharged nor do they seek to be discharged, but the case should pend, whether determined here or elsewhere, until it appears

²¹² See *Holcomb v. Aetna Life Ins. Co.*, 228 F.2d 75 (10th Cir. 1955).

²¹³ *Turman Oil Co. v. Lathrop*, 8 F. Supp. 870, 873 (N.D. Okla. 1934).

what portion of the fund, if any, shall be awarded to the plaintiffs, and what portions, if any, should be awarded to one of the two adverse claimants.”²¹⁴

(10) *Discharge of Stakeholder Under Civil Rule 22(1):*

Rule 22(1) does not expressly provide for the discharge of the stakeholder. However, since it is grounded, as is statutory interpleader, on the basic principles of equitable interpleader, the conclusion reached above should be true here, namely, that the stakeholder will not be discharged in the first stage of interpleader unless he is completely disinterested. Rule 67, which provides generally for deposit in court, could be availed of at times if the stakeholder were a defendant. “Once the suits against it had been commenced, Wells Fargo could have served notice upon the other parties, disclaimed all interests in the moneys, and requested the court’s permission to deposit the money into the registry of the court”²¹⁵ It is to be noted, however, that this rule does not by its terms discharge such a disinterested stakeholder.

(11) *Defensive Interpleader Under Statutory Interpleader:*

Although before the Interpleader Act of 1936, some courts had allowed interpleader by way of equitable defense to an action at law,²¹⁶ this right was specifically spelled out in the 1936 act as follows:

(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section

²¹⁴ *Moseley v. Sunshine Biscuits, Inc.*, 110 F. Supp. 157, 159 (W.D. Mo. 1952).

²¹⁵ *Bank of China v. Wells Fargo Bank & Union Trust Co.*, 209 F.2d 467, 473 (9th Cir. 1953).

²¹⁶ *Hintz v. Hintz*, 78 F.2d 432 (7th Cir. 1935); *Pearson v. Holden*, 58 F.2d 1050 (D. Mass. 1932); *Duell v. Greiner*, 15 F.2d 726 (S.D. Fla. 1926). Cf. *Marine Midland Trust Co. v. Irving Trust Co.*, 56 F.2d 385 (S.D.N.Y. 1932); *Irving Trust Co. v. Marine Midland Trust Co.*, 47 F.2d 907 (S.D.N.Y. 1931).

274b of the Judicial Code (U.S.C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code.²¹⁷

This subsection, however, is omitted from the 1948 codification "as unnecessary, such matters being governed by the Federal Rules of Civil Procedure."²¹⁸ This means, of course, that counterclaims and the bringing in of new parties are covered by the federal rules. Since affirmative relief is sought by the defendant, his claim is a counterclaim or, in certain cases, a cross-claim under rule 13.²¹⁹ Subdivision (h) of the same rule provides that the court shall order parties to a counterclaim who are not parties to the original action to be brought in as defendants.

The general principles applicable to plaintiff statutory interpleader, a fortiori govern interpleader by the defendant. But the court-adopted principle of ancillary or dependent jurisdiction may be of assistance.²²⁰

(12) *Defensive Interpleader Under Civil Rule 22(1):*

This rule specifically provides that "a defendant exposed to similar liability may obtain such interpleader by way of

²¹⁷ Act of Jan. 20, 1936, ch. 13, 49 Stat. 1096. See *Bynum v. Prudential Life Ins. Co.*, 7 F.R.D. 585 (E.D.S.C. 1947).

²¹⁸ Reviser's Note, 28 U.S.C. §§ 1335, 2361 (1958).

²¹⁹ See Official Form 21, "Answer to Complaint . . . with Counterclaim for Interpleader."

²²⁰ See *Walmac Co. v. Isaacs*, 220 F.2d 108 (1st Cir. 1955); *A/S Kreditt Bank v. Chase Manhattan Bank*, 155 F. Supp. 30 (S.D.N.Y. 1957).

cross-claim or counterclaim.”²²¹ And obviously the Federal Rules of Civil Procedure apply.

The general principles applicable to interpleader by plaintiff under rule 22(1) discussed above, govern interpleader by the defendant. Here also, as previously stated regarding statutory interpleader, the court-developed principle of ancillary or dependent jurisdiction may support a defensive interpleader.

(13) *Interpleader Under Special Acts:*

The Advisory Committee Note to rule 22 lists two special interpleader statutes which have been substantially continued.

The first is former Title 38 U.S.C. Section 445,²²² which deals with actions on veterans' contracts of insurance with the United States. This section provides, in part, as follows:

In all cases where the Veterans' Administration acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, a suit in the nature of a bill of interpleader may be brought by the Veterans' Administration in the name of the United States against all persons having or claiming to have any interest in such insurance in the . . . district court in and for the district in which any such claimants reside: *Provided*, That no less than thirty days prior to instituting such suit the Veterans' Administration shall mail a notice of such intention to each of the persons to be made parties to the suit.

Provision is made for service on parties not inhabitants of or not found within the district of an order of the court, personally or by publication.²²³ It has been held that under

²²¹ See *Bank of China v. Wells Fargo Bank & Union Trust Co.*, 209 F.2d 467 (9th Cir. 1953); *Republic of China v. American Express Co.*, 195 F.2d 230 (2d Cir. 1952); *A/S Kreditt Bank v. Chase Manhattan Bank*, *supra* note 220; *Republic of China v. Central Scientific Co.*, 120 F. Supp. 924 (N.D. Ill. 1954).

²²² 38 U.S.C. § 445 (1952). Section 445 is omitted from the current codification of title 38. However, the Advisory Committee's Note to Fed. R. Civ. P. 4, states that this statutory provision is continued by Fed. R. Civ. P. 4(e).

²²³ "Whenever a statute of the United States or an order of court provides for service of a summons, or of a notice, or of an order in lieu of summons

this act a defendant can counterclaim against the United States for a sum greater than that admitted by it.

The so-called interpleader pleadings are informal and irregular. Plainly, in a true interpleader proceeding, the mother could not claim against the United States any greater sum than it admitted owing to some one; and yet, by calling the proceeding an interpleader when it was not, her right to make her full claim should not be cut off. We think the situation calls for a disregard of all formalities of pleading and for treating the case as one where the United States is offering to pay the full amount, which it owes under this policy to whatever person or persons may be entitled by law to recover the sum from it²²⁴

The other special interpleader statute is found in section 97 of title 49, permitting a carrier to interplead conflicting claimants. This section provides: "If more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate."²²⁵ This section must be read with section 98, which reads as follows:

If someone other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.²²⁶

These two sections, it has been held, do not authorize a steamship company which has intentionally given possession of goods covered by order bills of lading to one not having the

upon a party not an inhabitant of or found within the state, service shall be made under the circumstances and in the manner prescribed by the statute, rule or order." FED. R. CIV. P. 4(e).

²²⁴ *Heinemann v. Heinemann*, 50 F.2d 696, 697-98 (6th Cir. 1931). See also *State Bank & Trust Co. v. United States*, 16 F.2d 439 (6th Cir.), *cert. denied sub nom. Pons v. State Bank & Trust Co.*, 274 U.S. 737 (1926).

²²⁵ 39 STAT. 541, 49 U.S.C. § 97 (1958).

²²⁶ 39 STAT. 541, 49 U.S.C. § 98 (1958).

bills of lading, thereafter to compel the holders of the bills to interplead and determine to which one of these holders it should make delivery.²²⁷

For matters of interpleader jurisdiction and procedure in the federal courts under these two acts, statutory interpleader and rule 22 interpleader, discussed above, control (depending, of course, upon the actual situation in a particular case).

The foregoing discussion has attempted to present the past and present status of interpleader in federal jurisdiction and to point up some of the problems still inherent in this field. It is hoped that it may be of some assistance to those interested in the study of this fascinating subject.

²²⁷ *Mallory S.S. Co. v. Thalheim*, 277 Fed. 196 (2d Cir. 1921).